

Volume 5

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE TESLA, INC. SECURITIES
LITIGATION.

)

) No. 18-cv-04865-EMC

)

San Francisco, California
Tuesday, January 24, 2023

TRANSCRIPT OF TRIAL PROCEEDINGS

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(Appearances continued, next page)

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Tuesday, January 24, 2023

8:17 a.m.

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

THE COURTROOM DEPUTY: All rise. Court is now in session, the Honorable Edward M. Chen is presiding.

THE COURT: Good morning. Have a seat everyone.

THE COURTROOM DEPUTY: Court is calling the case In Regarding Tesla Securities Litigation, Case No. 18-4865.

Counsel, please state your appearances for the record, beginning with plaintiff.

MR. PORRITT: Good morning, Your Honor. Nicholas Porritt on behalf of the plaintiff, with Levi & Korsinsky.

THE COURT: All right, thank you.

MR. SPIRO: Good morning. On behalf of defendants, Alex Spiro, Quinn Emanuel. Good morning.

THE COURT: Good morning, Mr. Spiro.

A couple matters. First, I will get out rulings shortly on the day three witnesses because I don't know whether Mr. Fath is going to be on or not, but I want to give my rulings so you can make your adjustments accordingly. And those rulings will go up through witness Koney, I believe that was, and Arnold, so that should -- that's what was covered in the charts. So you will have that this morning.

MR. PORRITT: Yes, that will be more than enough to

1 cover us today, Your Honor.

2 **THE COURT:** Okay.

3 **MR. SPIRO:** Yes, Your Honor. The issue of live
4 witnesses versus depo testimony live remains ever-present,
5 given where we are in the schedule. And again, I think for an
6 orderly process, and with all due respect to the witnesses, the
7 Court should strive to run an efficient process. And we are
8 asking the Court to have the live witnesses that have been here
9 and now waiting multiple days that changed their work
10 schedules, many of whom have traveled, to take priority over
11 the depo designations that can be played any time.

12 **THE COURT:** All right. Response?

13 **MR. PORRITT:** Your Honor, the live witnesses, I think
14 they are referring to are witnesses that we said may come on
15 Wednesday or Friday. And we still anticipate they will come on
16 Wednesday or Friday. So, you know, the order of witnesses,
17 including the witnesses coming by deposition, was arranged to
18 be logical. And that is the way we wish to present our case,
19 and that is our choice as plaintiff. So, we don't think there
20 is any reason to delay.

21 We are working with and consulting with them to work with
22 schedules. And as we understand it right now, the witnesses
23 who have to be here this week we can't really plan to call this
24 week. So that -- so we don't think there is any need to
25 address it. And we will continue to monitor it going forward.

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1 We'll see how it goes.

2 **THE COURT:** You anticipate that the witnesses that you
3 have called for this week will be called for this week, if not
4 today or tomorrow, but some time this week?

5 **MR. PORRITT:** We indicated -- so we have listed them,
6 we have sort of designated, if you like, or noticed them with
7 the exhibits. And so -- probably ahead of schedule, because we
8 didn't want the risk of going dark, according to your Court's
9 schedule. Aside from that, we indicated to defendants about a
10 month ago when we -- the days we anticipated at trial we
11 expected these witnesses to be called. And they are --
12 currently we expect to call them on those days.

13 **MR. SPIRO:** If I can respond just very briefly.

14 I think counsel's comments should suggest a lack of
15 conviction, "I have even more concern or equal concern." I
16 don't believe that's correct. I do not believe, when I look at
17 the clock and the timing, we're even close to on schedule. And
18 there are witnesses, like I've said that have flown in.

19 I also think in terms of the jury's time, a depo
20 designation can be fit in anywhere. If there's a witness snag,
21 if anything happens, you know, that can always be dealt with
22 that way.

23 And, frankly, while plaintiffs do have some control over
24 witness order, that is left to the sound discretion of the
25 Court. And frankly, what the witness order suggests proves,

1 frankly, to us, is that the timing of the expert and the
2 designations and the concerns that we have about hearsay and
3 cross-examination prove and we'll prove in the record that all
4 that this is -- really is, all an end-around hearsay. And
5 they're trying to put things in a certain order so that they
6 come in for the truth of the matter asserted, and not just for
7 the purported reasons.

8 So I don't know why that, itself, would be given much
9 weight.

10 **THE COURT:** Well, now you're getting into the weeds,
11 and I'm not there yet. So generally I defer to the parties'
12 order of presentation, unless there's a compelling reason. For
13 instance, a witness is not available, is only available -- that
14 witness is only available, and pick a range, and I -- I will
15 intervene from time to time to take that witness out of order.

16 If, here, the general problem is a scheduling problem, for
17 instance the deposition -- the testimony of Mr. Musk is taking
18 longer than you all have expected, um, and I think some of the
19 other witnesses seem to take longer than one would have
20 expected, that's just the ebb and flow of trial.

21 **MR. SPIRO:** Right. Just so, just again, just to get
22 right to it because I get that we're talking, and maybe the
23 Court isn't fully in the weeds on all of this.

24 After Mr. Musk's testimony, even though there are live
25 witnesses that are days behind, what plaintiff would do is just

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1 start playing videos to the jury today. And so I just want to
2 flag very directly we're talking about today, and that.

3 And so I think I've made my point, and we appreciate the
4 Court.

5 **THE COURT:** Well, let me ask. Are there any of the --
6 you're planning to call Brinkman by video.

7 Correct?

8 **MR. PORRITT:** Correct, Your Honor.

9 **THE COURT:** Viecha, live.

10 **MR. PORRITT:** Correct.

11 **THE COURT:** Fath by video?

12 **MR. PORRITT:** Correct, Your Honor.

13 **THE COURT:** Is there some reason why he can't be
14 deferred?

15 **MR. PORRITT:** Um, first of all I think logical -- he
16 logically fits with the witnesses we're calling today. Also,
17 um, you know, in many ways, in terms of scheduling, we know how
18 long a video witness is going to take precisely, to the second.
19 So the video witnesses are not the issue with the scheduling,
20 Your Honor. It's the live witnesses.

21 So we think Viecha will be quick. So we're optimistic,
22 depending on how long Mr. Musk takes this morning, that we may
23 even start -- sorry -- we may even start Mr. Ahuja this
24 afternoon, which means we will have made progress. And in
25 terms of video witnesses, we're talking three, perhaps four, at

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1 most, and two of which may be done today. So then we will be
2 moving.

3 **MR. SPIRO:** Yeah. I mean, again, even the comments
4 just now highlight the problem. So Mr. Ahuja -- who's very,
5 very busy, and has a job, and has been waiting for days -- will
6 be left until the end of the day. Just, just to start a
7 videotape.

8 **THE COURT:** Well, all right. I'm not going to take
9 things out of order just because someone's been waiting here.
10 We're in trial. It's inconvenient to everyone; it's
11 inconvenient to me. Witnesses have been called; they have to
12 respond. Period.

13 Now, if there's something compelling about a witness who
14 has to be somewhere, got a medical thing or, you know,
15 absolutely can't be after this week, then I'll hear that on an
16 individual basis.

17 **MR. SPIRO:** Understood. Your Honor, just one other
18 thing, given now that we know the order, I just need to make a
19 brief record.

20 Which is, the defense has taken the Court's comments
21 throughout, and most recently on January 18th, in which the
22 Court stated (As read):

23 "...comments after the class period" -- which
24 the Court called "post-mortem -- "are not
25 relevant. Because that's almost like expert

1 testimony. The kind of expert testimony
2 that, number one, invades the province of the
3 jury, two, that is coming from a source, not,
4 not a designated expert. So the effect of
5 the listener doesn't fly, when it's after the
6 fact."

7 When the Court made that determination on January 18th,
8 the defense relied on that determination. It impacted the way
9 that we planned our trial strategy. I can tell the Court
10 directly, it impacted the way I cross-examined Mr. Fries. I
11 understood that to be as clear as it sounds when I read it.

12 And we will always abide by the Court's ruling, but we
13 were surprised by the Court designation determinations. In
14 Mr. Brinkman's testimony, it seems that an exhibit that the
15 Court -- again, we took the Court to completely rule out of the
16 case -- and again, we don't even think that the exhibits that
17 are hearsay within -- that have been allowed in should be in a
18 federal courtroom. But, but we understood the Court's ruling,
19 at least.

20 **THE COURT:** All right. Your objection is noted for
21 the record. I will simply restate what I stated earlier.

22 And that is: Yes, effect of the listener rationale does
23 not apply to comments that were published by opinion makers or
24 others that may have affected the market after close of the
25 period. However, I have found that explanations of what

1 people's reactions were, even if it's retrospective, their
2 reactions to what happened during the class period, including
3 the disclosure notice, et cetera, et cetera, is not barred
4 simply because that reaction was explicated after the close of
5 the period.

6 So there's two different rationales. There's the -- I
7 call it slice of the market, you know, people in the market,
8 whether they were investors, whether they were people involved
9 with Tesla, or whether they were analysts, that that is
10 probative to what the market reaction was. Some of that
11 explanation may be retrospective in explaining what somebody
12 understood when they saw different publications. That's
13 different from effect-on-the-listener market.

14 And so when I said that post-close statements that go to
15 the effect on the listener, yes, that is -- that rationale does
16 not fly when you're talking about post-close period. That does
17 not preclude explanation of reactions that were -- or
18 explanation that would shed light on reactions during the class
19 period.

20 So maybe that's a thin distinction, but that's the
21 distinction I base it on.

22 **MR. SPIRO:** Understood. Understood, Your Honor.

23 **MR. PORRITT:** Your Honor, if I can raise two quick
24 points.

25 One, on Fath, we have finished our meet-and-confer,

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1 somewhat tardily, literally this morning. So I think we have
2 agreement on the relevant testimony for Joe Fath coming in and
3 out. So that's --

4 **MR. SPIRO:** Again, we maintain all the objections,
5 obviously, that we've had throughout this case and this trial
6 regarding what we think is hearsay and the other relevant
7 objections. We are continuing to meet and confer in good
8 faith, based on our understanding of the Court's rulings. But
9 I just want the record to be very, very clear that we think
10 that there's a combination of hearsay and -- and other issues,
11 and a lack of a right to cross-examine that is very, very
12 problematic in this trial.

13 And we're going to keep making that record, because we
14 think it's making this an unfair process to Mr. Musk.

15 **THE COURT:** All right. So am I to hear -- am I
16 hearing that this table, the last table I have, there's been
17 some developments in terms of stipulation or agreement?

18 **MR. PORRITT:** Correct, Your Honor. We've withdrawn
19 some testimony. Certain objections have been withdrawn.

20 **THE COURT:** Has that been communicated to the Court?

21 **MR. PORRITT:** Not yet, Your Honor. We literally
22 finished the process preceding court, before court this
23 morning.

24 **THE COURT:** Can you file that right away, so I know --
25 because I'm about to issue an order with various rulings, S's

1 and O's, and if I don't need to rule on something --

2 **MR. PORRITT:** We'll submit this. Mr. (Inaudible) will
3 file it straight away.

4 **THE COURT:** Okay.

5 **MR. PORRITT:** Lastly, there's one exhibit that they
6 designated for Mr. Musk, Exhibit 825, that we objected to on
7 multiple grounds, one of which was completeness. It was
8 incomplete. And you sustained it on the basis of completeness.
9 Defendants have stipulated -- it was an email that was lacking
10 its attachments.

11 **THE COURT:** Yes.

12 **MR. PORRITT:** And they said we'll have the
13 attachments. But we still object on the basis of hearsay. And
14 Your Honor didn't rule one way or the other on whether it's
15 hearsay or not. So we maintain our objection that it's hearsay
16 and --

17 **THE COURT:** Okay, I'm overruling that. My only basis
18 for sustaining was the lack of completeness. So the object
19 based on hearsay is overruled.

20 **MR. PORRITT:** All right. Very good, Your Honor.

21 **THE COURT:** Two more things, quickly.

22 Time on the clock, according to Ms. Ayala, is plaintiffs
23 have used five hours, 59 minutes. Defendants, six hours and 43
24 minutes. So I don't know how -- if you're in line with that,
25 that's what it is. You're about a third of the way through,

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1 which is about right, because we're three days out of nine so
2 far.

3 There were a little extra time that I kept track on
4 certain days of beyond the 15 minutes. It comes out to about
5 ten minutes apiece. So I'm going to add ten minutes. And,
6 allocating those equitably between the parties. So I meant
7 what I said, that I'm looking at the clock.

8 **MR. SPIRO:** Understood, Your Honor.

9 **MR. PORRITT:** Understood. Appreciate it. Thank you,
10 Your Honor.

11 **THE COURT:** And then finally, the matter was raised
12 about Mr. Musk's location. I will tell you that whatever the
13 arrangements were made, they were made with the Marshal's
14 office and the CSO on prior days. I was not aware of what the
15 arrangements were.

16 When it was brought to my attention that the previous
17 location where he was -- parked his stuff was not available,
18 that's when the request was to use this other location. And
19 that's when it was brought to my attention.

20 And my concern is that I don't want anybody in the
21 corridors anywhere near the Court staff or jurors. And so
22 that's why I've arranged to have CSO court staff assure that
23 that is complied with. So I think there is complete
24 insulation.

25 **MR. PORRITT:** (Nods head)

1 **THE COURT:** I understand one of my colleagues left a
2 note because Mr. Musk parked in his parking space yesterday,
3 but that's -- that's between those two, not me. I have nothing
4 to do with that. So --

5 **MR. SPIRO:** We have not, frankly, been involved in
6 parking or where he's -- stationed by the Marshals.

7 **THE COURT:** Neither have I, until today.

8 **MR. PORRITT:** Very good, Your Honor. You saw our
9 concerns, but thank you for the comments.

10 **THE COURT:** Yeah. I did want to make sure there was a
11 free zone. I do not want any contact. So --

12 **MR. PORRITT:** Thank you, Your Honor.

13 **THE COURT:** Thanks. Okay. Do we know if the jury's
14 here?

15 **MR. SPIRO:** Somebody will get him, I assume, when --
16 the Court looked at me yesterday at some point and was looking
17 at me like, do I know where he is.

18 **THE COURT:** And I don't know, who do we look to?
19 Who's in charge of communicating?

20 **MR. LIFRAK:** (Raises hand)

21 **THE COURT:** Okay.

22 **MR. SPIRO:** My colleague can alert somebody in the
23 hallway who can alert whomever.

24 **THE COURT:** Okay. Do we know if the jury's here?

25 (Off-the-Record discussion between the Court and Clerk)

MUSK - CROSS / SPIRO

1 **THE COURT:** You can send the signal that the witness
2 can come back.

3 (A pause in the proceedings)

4 (The following proceedings were held in the presence of
5 the Jury)

6 **THE COURTROOM DEPUTY:** All rise for the jury.

7 **THE COURT:** All right, have a seat, everyone. Good
8 morning, once again, members of the jury.

9 As you will recall, Mr. Musk was being examined by
10 Mr. Spiro. And that's where we are going to pick up.

11 **ELON MY, PLAINTIFF'S WITNESS, RECALLED**

12 **CROSS-EXAMINATION RESUMED**

13 **BY MR. SPIRO**

14 **Q** Good morning. And good morning, Mr. Musk.

15 **A** Good morning.

16 **Q** Where we left off, we were talking about you speaking to
17 Egon Durban the night of the 6th, and then the morning of the
18 7th, waking up in Los Angeles.

19 And I'm going to go back to my trusted calendar here so we
20 can keep track of everything. And so we're talking about
21 August 7th, 2018.

22 **MR. SPIRO:** Can we put up Exhibit 87, which is in
23 evidence, and publish it to the jury, please.

24 (Document displayed)

25 **MR. SPIRO:** And if we could zoom in on the bottom

MUSK - CROSS / SPIRO

1 email that starts "Elon."

2 (Document enlarged)

3 **BY MR. SPIRO**

4 **Q** Okay. So you were shown this exhibit on plaintiff's
5 examination, quickly but, I want to sort of look at it a little
6 bit more closely. I'm going to start at (As read):

7 "This comes from a visit to the U.S. by the
8 crown prince in March."

9 "The FT will also report that the Saudis
10 previously approached Tesla about buying new
11 shares but that we declined because we
12 weren't looking to raise capital."

13 Okay. So first, it's the Crown Prince. The second part,
14 when they are talking about buying new shares, did you
15 understand that to mean, like, the way anyone can buy a share
16 of Tesla? Or an actual approach to Tesla to buy capital
17 directly from the company?

18 **A** The -- the latter. This was -- there were -- they were
19 referring to, buying new shares would require an issuance of
20 shares by the company. So that is not buying in the public
21 market.

22 **Q** And then it goes on to say:

23 "The reporter says the Saudis 'First
24 approached Tesla after investment in Uber in
25 2016.'"

MUSK - CROSS / SPIRO

1 **A** Yes.

2 **Q** So those meetings and emails that we showed you when I
3 began my examination of the meetings that you had with the PIF,
4 to your knowledge, was that information public before this?

5 **A** No, none of that information was public.

6 **Q** Now, do you remember if shortly after receiving this email
7 -- and I understand you didn't know the exact timing of the
8 article. Do you remember, that morning before your tweet,
9 whether or not the Tesla shares began to rise in price?

10 **A** I do not.

11 **MR. SPIRO:** And I'm going to offer 332. This is the
12 *Financial Times* article. The defense would maintain its
13 objections on hearsay and other grounds, but would enter the
14 *Financial Times* story.

15 And while we're doing that, can you just put up Exhibit 8,
16 please? That's in evidence.

17 (Document displayed)

18 **BY MR. SPIRO**

19 **Q** Did you see that at the bottom of Exhibit 87, it said the
20 deadline -- so we are just at Exhibit 8, and I'm just going to
21 highlight, 9:48 a.m. Okay. And if we could put up side by
22 side Exhibit 87.

23 **MR. KOTARSKI:** I'm sorry, could you repeat that?

24 **MR. SPIRO:** Can we put up side by side, please,
25 Exhibit 87.

MUSK - CROSS / SPIRO

1 (Document displayed)

2 **MR. SPIRO:** Can we blow up the same email to Mr. Musk.

3 (Document displayed)

4 **BY MR. SPIRO**

5 **Q** Do you see where it says "Their deadline is 9 a.m.
6 Pacific"?

7 **A** Yes.

8 **Q** Mr. Musk, in your career, have you ever had to make a
9 split-second decision before?

10 **A** Many times.

11 **Q** When this occurred on the morning of August 7th, did you
12 think it was important that your shareholders heard from you
13 versus the *Financial Times*?

14 **A** Yes, absolutely. Yes.

15 **Q** Now, back to the Court for a moment.

16 **MR. SPIRO:** I don't think there's an objection to 322
17 but I just want to make sure that's been offered.

18 **THE COURT:** 33 --

19 **MR. SPIRO:** 2 -- 322. That's the *Financial Times*
20 story, just want to make sure that's in evidence.

21 **THE COURT:** 322? Do you show -- are you asking
22 whether that's already been admitted?

23 **MR. SPIRO:** No, I'm offering it, Your Honor. I think,
24 with no objection.

25 **THE COURT:** All right.

MUSK - CROSS / SPIRO

1 (Off-the-Record discussion between counsel)

2 (Reporter clarification)

3 **THE COURT:** I couldn't hear it, either. Is there an
4 objection?

5 **MR. SPIRO:** They said: If it's the right number, I
6 would agree. Only if it's the right number.

7 But I believe it is the right number.

8 **THE COURT:** On my chart I have 332, but I didn't see a
9 322. But maybe that's on another chart.

10 **MR. SPIRO:** We can take it up at the break,
11 Your Honor. I'll proceed.

12 **THE COURT:** Okay.

13 **BY MR. SPIRO**

14 **Q** And I'm just marking where again, on the August 7th, the
15 "Am considering" tweet.

16 And what were you trying to convey when you said "Am
17 considering taking Tesla private"? That phrase, "Am
18 considering taking Tesla private."

19 **A** I was trying to convey that this is a matter that I was --
20 it's very literal. That I was considering taking Tesla
21 private. Not that -- that I would, or -- you know. But that
22 it was under consideration.

23 **Q** And when you said "Am considering," were you intending to
24 convey to the market that this was virtually done or a virtual
25 certainty?

MUSK - CROSS / SPIRO

1 **A** Certainly not. I wouldn't have said "considering" --
2 yeah, I would have said something -- that's very literal, "I am
3 considering."

4 **Q** And did you expect -- you earlier testified that you
5 expected your tweets to be read together. Did you intend for
6 and expect that "Am considering" was something that the market
7 knew, and was to be interpreted about all of your tweets?

8 **A** Yes.

9 **Q** Now, the tweet ends, the end, after the main sentence it
10 says "Funding secured." What did you intend to convey with
11 that phrase?

12 **A** Simply that funding was not an issue.

13 **Q** And at the time that you are sending this to the market
14 are you soliciting investors? Do you want people calling you
15 up and trying to give you capital?

16 **A** Uh, no.

17 **Q** When you do an investment round, you know you, talked
18 about some of your companies, Neuralink, Boring, and you
19 announce -- or SpaceX -- and you announce "We're doing a
20 funding round," how many minutes does it take before the round
21 is over-subscribed, usually?

22 **A** It's usually the same day, if not hours.

23 **Q** And again "over-subscribed" means --

24 **A** That means there's far more capital than is necessary. I
25 believe every financing round I've ever done has been

MUSK - CROSS / SPIRO

1 over-subscribed.

2 Q And again, just to make sure everybody understands what
3 that means, that means people are trying to give you money for
4 that round, and you're saying, even in the same day, "No, I
5 can't take any more money"?

6 Is that what "over-subscribed" means?

7 A Yes. It's -- it's not a problem for me to raise money.
8 I've done a very good job for investors. If you do a good job
9 for investors, they, they give you money.

10 Q So from the very first words, "Am considering," did you
11 intend to convey to the market that this was a virtual
12 certainty?

13 A Definitely -- definitely not.

14 Q Okay. When you said the message "Am considering taking
15 Tesla private at \$420. Funding secured," did you doubt this
16 message and its accuracy when you sent it?

17 A No. That's absolutely what I believed.

18 Q Do some things that you consider happen?

19 A Well, some things, when I -- considering, it may or it may
20 not happen.

21 Q Okay. And sometimes you consider things, and they don't
22 happen.

23 A Yes. I think that's generally what people mean when they
24 say "considering." They're thinking about it, but they've not
25 made a decision one way or the other.

MUSK - CROSS / SPIRO

1 **MR. SPIRO:** You can take down the exhibits that are up
2 and if we can put up Exhibit 81.

3 **BY MR. SPIRO**

4 **Q** And as we're doing that, Mr. Musk, when you sent this
5 tweet, were you acting as a bidder on this transaction? Or in
6 some other role?

7 **A** I was acting as the bidder.

8 (Document displayed)

9 **Q** And can you just explain what you mean to the jury by a
10 bidder, versus your other roles?

11 **A** Sure. So in this context, I have to be, um, sort of
12 separate from the company. Meaning the -- the board in this
13 case would represent the company and the shareholders and I
14 would represent the -- the ones taking the company private. So
15 I -- so it's sort of a weird situation.

16 But essentially I -- I represent the buyer more -- with
17 others, the -- the buyer of the company or the investors
18 taking, potentially taking Tesla private. So, and then the
19 board would represent the company as the seller.

20 **Q** Now, at the time of your "Am considering" tweet -- and I
21 have, just to remind the jury, 81 up on the screen -- you had
22 already made an offer to the board to take Tesla private at
23 420.

24 **A** That is correct. Yes. Yeah.

25 **Q** When you sent the "Am considering" tweet, did you intend

MUSK - CROSS / SPIRO

1 to mislead investors?

2 **A** Absolutely not.

3 **Q** When you sent the "Am considering" tweet, were you trying
4 to defraud investors, Mr. Musk?

5 **A** No. Quite the opposite. My intention with the tweet was
6 to make sure that all investors were aware of what the board
7 was aware of, and what the Saudi investment fund was aware of.
8 So I was considering, when receiving that email about the
9 *Financial Times* article, that there would be -- that the
10 information had leaked and that some investors would be aware
11 of the fact that I was considering taking the company private.
12 And this would disadvantage other investors, especially small
13 investors.

14 **Q** Did you intend to deceive your shareholders?

15 **A** No, I intended to inform them. To make sure that all
16 shareholders were on equal footing, and there weren't some that
17 were aware of it and some that were not.

18 **Q** On August 7th, after the "Am considering" tweet and the
19 *Financial Times* article, and putting aside movements in the
20 market because of the *Financial Times* article, or because of
21 your tweets or any other reason, at that time, if the market
22 rose, did you sell your stock?

23 **A** No.

24 **Q** Did you have any ill motive in the world, possibly, to
25 deceive your shareholders?

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1 **A** Um, not --

2 **MR. PORRITT:** Objection, Your Honor. Leading.

3 **THE COURT:** Sustained. Rephrase, please.

4 **BY MR. SPIRO**

5 **Q** Did you have any ill motive?

6 **MR. PORRITT:** Objection, Your Honor.

7 **MR. SPIRO:** I'm asking. It's a question.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** No, I had no ill motive. In fact, I
10 thought I was doing the right thing, which is to make sure that
11 shareholders -- all shareholders were aware of the take-private
12 proposal that the board was aware of and that the Saudi PIF was
13 aware of.

14 My intent here was to do the right thing for shareholders,
15 so that all shareholders were aware of the take-private, and
16 not just a few big shareholders.

17 **MR. SPIRO:** I'm now going to throw up Exhibit 9, in
18 evidence.

19 **JUROR:** I need a pen.

20 (A pause in the proceedings)

21 **BY MR. SPIRO**

22 **Q** Okay ,now we're on Exhibit 9. And as we pull up any
23 tweets or documents, let's just highlight the time at the
24 bottom.

25 This is 10:40 a.m. At this time, Mr. Musk, still just

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1 considering?

2 **A** Yes.

3 **Q** Yeah. And who are you responding to here?

4 **A** Um, Fred Lambert. He's -- I think he is a shareholder
5 and -- although I don't know, but he writes a -- he's a writer,
6 has a website called "Electrek," writes about electric
7 vehicles.

8 **Q** Do you respond sometimes in your tweets to random
9 shareholders?

10 **A** Um, yes. I -- I try to maintain a dialogue with
11 shareholders. Actually, especially small retail shareholders,
12 who do not normally have a way to talk to the CEO.

13 **Q** Now, if we could highlight the words "if" and the words
14 "either scenario."

15 (Document highlighted)

16 **Q** And what I'm going to ask you, Mr. Musk, is when you say
17 "if" and you say "either scenario," and you are speaking to a
18 shareholder who writes for a website, are you intending to
19 convey that this is a virtual certainty? Or something
20 different?

21 **A** No, I'm being very clear here that either scenario is
22 possible. That we may go private, or we may not.

23 **MR. SPIRO:** Exhibit 10, please.

24 (Document displayed)

25

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1 **BY MR. SPIRO**

2 **Q** Okay, now we are at 11:00 a.m., if you look at the bottom.
3 Are you still just considering this, Mr. Musk?

4 **A** Yes.

5 **Q** And then do you see the word "if"?

6 **A** Yes.

7 **Q** And when you write the word "if," are you intending to
8 convey a virtual certainty? Or maybe?

9 **A** I'm obviously intending to convey that this may or may not
10 happen.

11 **Q** Exhibit 11, please.

12 (Document displayed)

13 **Q** 11:13 a.m. At this time, is this still -- and again,
14 we're on August 7th. Is this still a consideration?

15 **A** Yes.

16 **Q** Okay. And I just want to ask you again. This came up
17 yesterday, but I want to make sure, it's very important that
18 the jury understands this.

19 Can you just explain what happens if a shareholder -- in
20 your consideration, in your mind at the time -- decides to stay
21 with the private Tesla rather than sell their shares?

22 **A** Um, well, I wanted to try to allow shareholders who wished
23 to remain shareholders of Tesla if it were private to remain
24 shareholders of Tesla if it were private. If that was their
25 wish.

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1 **Q** And at the time of this tweet, did you know how many
2 shareholders or how many shares would end up, if your
3 consideration were to come to pass, going private or being
4 bought out?

5 **A** Well, no, it would depend on the will of the shareholders.
6 If the shareholder wished to remain with Tesla as a private
7 company, or wished to sell, I would support either decision.

8 **Q** And if more shareholders stayed with the company, does
9 that then make it so it that the buyer, you, has to pay less
10 because they don't have to buy out as many shareholders?

11 Is that a fair characterization?

12 **A** Um, yes. But as I said, I would support either way. If
13 shareholders wish to remain with Tesla as a private company,
14 or, or sell their stock, I would -- I mean, I was trying to be
15 -- do the right thing for shareholders here, and to do as they
16 -- as they wished.

17 **MR. SPIRO:** If we can just go down so now we can see
18 the whole exhibit.

19 (Document displayed)

20 **MR. SPIRO:** I want to make sure the jury sees the
21 whole exhibit. I can't tell how big the screen is. But maybe
22 we go down to -- okay

23 (Document displayed)

24 **BY MR. SPIRO**

25 **Q** When you were meeting with the PIF on July 31st, okay, at

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1 that time, did you know what percentage of shareholders would
2 end up rolling or not, in your consideration?

3 **A** No.

4 **Q** Okay. If you -- if you didn't know how many shareholders
5 would remain or not as of the July 31st meeting with the PIF,
6 could you have possibly known exactly how much money was needed
7 to buy out the shareholders?

8 **A** No, not exactly.

9 **Q** Okay.

10 **MR. SPIRO:** If we could go back up to the tweet.
11 First tweet.

12 (Document displayed)

13 **BY MR. SPIRO**

14 **Q** There was some testimony from an ex-professor that this
15 was, like, the worst of all of the tweets. Do you know, as you
16 sit here today, that you weren't sued for this tweet?

17 **A** No.

18 **Q** Okay. Plaintiff's counsel asked you -- we're still on
19 August 7th -- if you know that the market paused, that Nasdaq
20 paused the market on August 7th. So your original "Am
21 considering" tweet has been in the marketplace for an hour and
22 change. Okay.

23 (Counsel writes on easel)

24 **Q** On August 7th. That's it. I mean, as you sit here today,
25 are you aware that you are being sued for billions of dollars?

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1 **A** Um --

2 **MR. PORRITT:** Objection, Your Honor. Leading, again.

3 **THE COURT:** Overruled.

4 **MR. PORRITT:** Not sure what the relevance of this is.

5 **THE COURT:** Overruled.

6 **BY MR. SPIRO**

7 **Q** Are you aware that the "Am considering" tweet that's in
8 the market for an hour, are you aware that you are being sued
9 here today, sir, for billions of dollars?

10 **A** I am aware of that. I mean, the -- yes. I'm being sued
11 by a class action law firm from Texas that it claims to
12 represent the shareholders. I do not believe they actually
13 represent the shareholders.

14 **MR. SPIRO:** Could we put up Exhibit 1001, this's --

15 **MR. PORRITT:** I move to strike that. That -- that's
16 improper testimony from the witness.

17 **THE COURT:** That's inappropriate. That comment from
18 Mr. Musk will be disregarded, stricken from the record.

19 **BY MR. SPIRO**

20 **Q** Okay. Just simply -- it's a yes or no -- are you aware
21 that you're being sued for billions of dollars?

22 **A** Yes.

23 **MR. SPIRO:** Okay. If we could show the witness 1001.
24 There's no objection to this exhibit, but it's not in, so I
25 just want to give the Court a moment. And I'd be offering this

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1 exhibit.

2 **THE COURT:** Any objection?

3 (Document displayed to the Witness)

4 **MR. PORRITT:** No objection, Your Honor.

5 **THE COURT:** Admitted.

6 (Trial Exhibit 1001 received in evidence.)

7 **THE COURT:** You may publish.

8 **MR. SPIRO:** Okay.

9 (Document displayed)

10 **MR. SPIRO:** And if we could go up to August 7, at
11 10:55 a.m. from Ron Baron. Okay.

12 (Document enlarged)

13 **BY MR. SPIRO**

14 **Q** Okay so we're at 10:55 a.m., tweet's gone out, and you
15 told the jury, but just remind them, who's Ron Baron?

16 **A** Ron Baron is an investor in Tesla. Should I say more
17 about him? Or--

18 **Q** Well --

19 **A** Okay.

20 **Q** Let me just ask this. Does he have about \$50 billion of a
21 fund?

22 Is that about the size of his fund? Do you know?

23 **MR. PORRITT:** Objection Your Honor. Again, leading.

24 **THE COURT:** Sustained.
25

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1 **BY MR. SPIRO**

2 **Q** Well, is he a personal investor, or does he have a fund?

3 **A** Ron Baron has a very large fund, and is one of the most
4 respected investors in the world.

5 **Q** Okay. He writes on August 7th at 10:55 a.m. (As read):

6 "If you decide to purchase Tesla in a 'going
7 private' transaction, I hope you will allow
8 us to continue to be an investor in your
9 newly formed business."

10 Did you receive that email from Mr. Baron?

11 **A** Yes.

12 **Q** And he ends the email by saying: "Thanks in advance for
13 considering us as one of your partners."

14 Was he, you know, technically, a partner?

15 **A** Well, I think he's using "partner" in a colloquial sense,
16 he's not, strictly speaking, partner. He's a significant
17 investor, and someone whose opinion I respect.

18 **Q** Do you recall, on August the 7th, whether or not Ron Baron
19 announced his intention to remain with a private Tesla to the
20 whole world?

21 **A** I don't think so.

22 **MR. SPIRO:** Can we show Exhibit 1031 to the witness,
23 and just the witness.

24 **BY MR. SPIRO**

25 **Q** And see if this refreshes your recollection.

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1 (Document displayed to the Witness)

2 **A** Oh, okay.

3 Yes, it would seem that he did announce to the world that
4 he's good with Tesla going private.

5 **MR. SPIRO:** Now let's go to Exhibit 13.

6 (Document displayed)

7 **BY MR. SPIRO**

8 **Q** And he did that on August the 7th.

9 **MR. PORRITT:** Objection, Your Honor. That document is
10 not in evidence. And I'm not sure the witness has any
11 recollection.

12 **THE COURT:** Well, which -- I'm not sure how this
13 exhibit aligns with the question you just asked.

14 **MR. SPIRO:** I can -- I couldn't hear the Court
15 exactly, but I can move on. I'm moving on to Exhibit 13 and --

16 **THE COURT:** I'll sustain the objection for the purpose
17 of the record.

18 **MR. SPIRO:** Exhibit 13.

19 And this has already been admitted.

20 **BY MR. SPIRO**

21 **Q** We're still on August 7th. At the time that you send this
22 tweet, are you still considering?

23 **A** Yes.

24 **Q** And attached to this tweet, what is this in the bottom of
25 the tweet (Indicating)?

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1 **A** That is the Tesla take-private blog that provides further
2 detail about the take-private proposal.

3 **Q** Okay. And did you intend for the tweet to be read
4 together with the blog post that you attached to the tweet?

5 **A** Yes.

6 **Q** Mr. Musk, you know, when you send an email, do you intend
7 for the email and the attachment to the email to be read
8 together?

9 **A** Absolutely.

10 **Q** So the "Only reason why this is not certain is that it's
11 contingent on a shareholder vote," can you tell the jury what
12 you are trying to convey with this tweet?

13 **A** I'm just saying that the only fundamental obstacle is
14 shareholder vote.

15 **Q** And is this what's in your mind at the time, and in your
16 considerations?

17 **A** Yes.

18 **Q** Now, when you say "Investor support is confirmed," what
19 are you intending to convey?

20 **A** I'm intending to convey that there's sufficient funding to
21 take Tesla private. Investors -- those will be the ones taking
22 private. The shareholders would be the existing Tesla
23 shareholders. So different, different groups.

24 **Q** Attached to this is the blog post, Exhibit 12, in
25 evidence.

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1 **MR. SPIRO:** If we could throw that up.

2 (Document displayed)

3 **BY MR. SPIRO**

4 **Q** Now, the jury was shown a text message from Deepak Ahuja,
5 your CFO -- the CFO of Tesla at the time, talking about this
6 blog post. Was he involved in the drafting of this blog post?

7 **A** Yes.

8 **Q** Okay. Was he in the meeting with you and the PIF on
9 July 31st?

10 **A** Yes.

11 **MR. SPIRO:** If we could highlight, if we can do the
12 highlighted version?

13 (Document highlighted)

14 **MR. SPIRO:** Okay.

15 **BY MR. SPIRO**

16 **Q** "A final decision has not been made yet."

17 **MR. SPIRO:** Can we continue?

18 (Document displayed)

19 **BY MR. SPIRO**

20 **Q** "I would like," "my intention."

21 "Intention."

22 **MR. SPIRO:** Can we continue?

23 (Document displayed)

24 **BY MR. SPIRO**

25 **Q** "I don't envision," "I'm trying to accomplish." "This

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1 proposal to go private would ultimately be finalized through a
2 vote of our shareholders." "If the process ends..." "Either
3 way, the future is very bright..."

4 Did I read those phrases within this blog post correctly?

5 **A** Yes.

6 **Q** Okay. When you wrote words like that, on August 7th, were
7 you intending to convey to the world that this was a virtual
8 certainty?

9 **A** Definitely not. I'm very clear here that it is dependent
10 on how the shareholders feel.

11 **Q** Now, you talk about, at the beginning, a final decision
12 has not been made. Right?

13 **A** Yes.

14 **Q** Okay. So we've got that contingency. You say you would
15 like to structure this. Okay. Structure had not been
16 finalized.

17 **A** Correct.

18 **Q** Okay. Another contingency. And if we look at the bottom,
19 it says that you were still figuring out the process.

20 **MR. SPIRO:** Can we blow that up? Because I don't have
21 the exact words.

22 (Document enlarged)

23 **BY MR. SPIRO**

24 "If the process ends the way I expect it
25 will..."

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1 At that time, you weren't positive about a concrete
2 process.

3 **A** Correct. I mean, the -- fundamentally, in order to
4 understand how the Tesla shareholders felt and whether they
5 wanted Tesla to go private or not, we have to ask the
6 shareholders. So, but in order to ask the shareholders if
7 Tesla should go private or not, it needs to be made public
8 information so that -- and all shareholders need to know, at
9 the same time. So they can make their decision.

10 **MR. SPIRO:** If we could put up, again, Exhibit 1001,
11 the Ron Baron email.

12 (Document displayed)

13 **MR. SPIRO:** And if we could just highlight the
14 timestamp on when Ron Baron emailed you.

15 (Document highlighted)

16 **BY MR. SPIRO**

17 **Q** Now, when you said -- this tweet with the blog post
18 attached, okay, toward the end of the day on the 7th, did you
19 doubt it when you sent it? Did you doubt its accuracy?

20 **A** No.

21 **Q** Did you believe it to be accurate?

22 **A** Absolutely. I said exactly what I felt to be true.

23 **Q** Were you intending to deceive your shareholders?

24 **A** No, I --

25 **MR. PORRITT:** Objection. Leading, Your Honor.

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1 **THE COURT:** Overruled.

2 **BY MR. SPIRO**

3 **Q** You can answer, Mr. Musk.

4 **A** No, the -- the exact opposite. I was trying my best to
5 keep shareholders informed, and ensure that all shareholders
6 had the same information.

7 **Q** And after the tweets with the blog post, after the --
8 which is after the Ron Baron email at the end of the day,
9 whether or not the shares went up for this reason or any
10 reason, at that time, did you sell any of your shares?

11 **A** No.

12 **Q** Did you have any ill motive?

13 **A** No, I -- my motive I believe was a good motive, which was
14 to make sure that all shareholders were aware of what was going
15 on, and not just some shareholders.

16 **MR. SPIRO:** I'm going to show the witness Exhibit
17 243 -- I believe there is no objection -- and offer 243 in
18 evidence.

19 **THE COURT:** Any objection?

20 **MR. PORRITT:** No objection, Your Honor.

21 **THE COURT:** All right. Admitted.

22 (Trial Exhibit 243 received in evidence.)

23 (Document displayed)

24 **BY MR. SPIRO**

25 **Q** And as we are pulling that up, just to stay efficient

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1 here, what is Goldman Sachs?

2 **A** Goldman Sachs is one of the leading investment bankers in
3 the world. Yeah.

4 **Q** And who is Dan Dees?

5 **A** Dan Dees heads their investment banking division.

6 **Q** And I want to draw your attention to the email on
7 August 7th, at the end of the day. I don't know whether that's
8 Pacific or Eastern. But he says in his email:

9 "I thought your letter today was excellent.

10 Very clear."

11 Did I read that right?

12 **A** Yes.

13 **Q** At the end of the day, the very same day, on August 7th,
14 did you think that your considerations and what you were
15 thinking was clear?

16 **A** Yes.

17 **Q** Do you know -- plaintiff's counsel asked you, do you know
18 that after you made your considerations, whether people were --
19 did you watch the stock? Were people trading on your
20 considerations?

21 Do you know whether they were betting on your
22 considerations or not, people in the market?

23 **A** I don't know.

24 **Q** But fair to say, I mean, Mr. Musk, there was a lot of
25 media attention around this. Is that fair?

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1 **A** Yes.

2 **Q** Okay. So, and then I just want to go a little bit further
3 down. And he, Mr. Dees says:

4 "This whole topic feels very reminiscent of a
5 conversation that we started together, many,
6 many months ago at Larry's house!"

7 **A** Yes.

8 **Q** Who is Larry?

9 **A** That would be Larry Ellison.

10 **Q** And you testified yesterday that you thought -- you
11 weren't sure, but you thought that Mr. Ellison would be
12 supportive of a going-private.

13 **A** Absolutely.

14 **Q** And what led you to that belief?

15 **A** We had discussed it, and he was very supportive. And, in
16 fact, was trying to help potentially get SoftBank to assist
17 with the take-private -- with a potential take-private in the
18 future.

19 **Q** And has Mr. Ellison invested with you before?

20 **A** Yes.

21 **Q** Okay. Does Mr. Ellison -- the jury doesn't know
22 Mr. Ellison.

23 **A** Sure.

24 **Q** Does Mr. Ellison have the type of capital that could help
25 you with such a transaction?

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1 **A** Yes. Mr. Ellison, alone, could have helped, could have
2 done the take-private. Just by himself. He is one of the
3 largest investors in Tesla.

4 **MR. SPIRO:** And if we could go up to the email on
5 August 8th, the very next day.

6 (Document displayed)

7 **BY MR. SPIRO**

8 **Q** Mr. Dees, who works at Goldman Sachs and is the head of
9 their investment banking division, as you testified, says in
10 bullet 1:

11 "The structure and rationale make perfect
12 sense."

13 **A** Yes.

14 **Q** Okay. On August 8th, did believe that your consideration
15 could become possible?

16 **A** Yes.

17 **Q** Did anybody tell you this is impossible?

18 **A** No. The exact opposite.

19 **Q** Okay.

20 **A** I mean, Dan Dees is very clear that he thinks, as he said,
21 that the structure and rationale make perfect sense. And he is
22 head of investment banking of the biggest investment bank in
23 the world.

24 **Q** Okay. And just quickly, Bullet No. 2.

25 (Document highlighted)

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1 Q He says:

2 "I have received a few very interesting calls from
3 funding sources that would want to add to your
4 funding mix here, and could be very interesting."

5 Okay. So, what is Mr. Dees conveying to you already, and
6 we're just on August 8th?

7 A That there was strong interest in -- from investors in
8 taking Tesla private. Yeah.

9 Q Did Goldman Sachs ultimately become an adviser on this
10 deal?

11 A Yes.

12 Q Why did you select them, as opposed to JP Morgan or
13 another bank?

14 A Well, um, it was actually joint with Goldman Sachs and
15 Morgan Stanley, who are the two top investment banks in the
16 world, who were supportive of the deal.

17 In the case of JP Morgan, Tesla, um, has a very negative
18 relationship with JP Morgan. JP Morgan used to have all of
19 Tesla's commercial banking business. But when I asked Jamie
20 Dimon at one point for support with a Tesla automotive leasing
21 line, he declined to support Tesla.

22 And I said: Well, if you will not support Tesla when
23 other banks will, then you cannot also have Tesla's commercial
24 banking business. So I withdrew all commercial banking
25 business from JP Morgan, which, to say the least, made

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1 JP Morgan hate Tesla and me very much.

2 We have a very negative relationship with JP Morgan.

3 **Q** Did JP Morgan decide to sue you about the words at issue
4 in this very case?

5 **A** Yes.

6 **MR. PORRITT:** Objection, Your Honor. What's the
7 relevance of this testimony?

8 **MR. SPIRO:** There's relevance, and I can --

9 **THE COURT:** Overruled.

10 **BY MR. SPIRO**

11 **Q** Okay, so they sued you on this very case.

12 **A** They're still -- they're still suing us.

13 **Q** Do you happen to know somebody named Ryan Brinkman who
14 works at JP Morgan?

15 **A** I don't know him.

16 **Q** Do you know whether he's -- gave a videotaped testimony
17 that may be played in this trial?

18 **MR. PORRITT:** Objection, Your Honor. Lack of
19 foundation.

20 **THE COURT:** Sustained.

21 **BY MR. SPIRO**

22 **Q** Do you know how much money JP Morgan made off of Tesla
23 before suing you in this matter?

24 **A** I believe they made billions of dollars off Tesla, and
25 they want even more. And, yes. JP Morgan hates Tesla, in a

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1 nutshell.

2 **MR. SPIRO:** Exhibit 256. This has not been offered
3 yet. I understand there is no objection. And I'll give the
4 Court a moment, and then would offer 256.

5 **THE COURT:** All right. No objection?

6 **MR. PORRITT:** We don't object to the document itself,
7 Your Honor, but there's -- there's no -- I don't think there is
8 foundation for this witness. He's not on this email.

9 **MR. SPIRO:** Yeah, we can redact the top email, that's
10 not particularly important. But he is on the rest of the
11 emails.

12 So we can go ahead and not show that email, and just admit
13 the -- the email, the email below?

14 **THE COURT:** So what you want admitted is the lower
15 half?

16 **MR. PORRITT:** Your Honor, we can withdraw that.
17 That's -- we can -- no, no objection, we can admit this.

18 **THE COURT:** All right. No objection, then it is
19 admitted.

20 (Trial Exhibit 256 received in evidence.)

21 **BY MR. SPIRO**

22 **Q** Okay. And now, we had shown some of these -- Mr. Dees'
23 emails in the days following August 7th. And here we are.

24 **MR. SPIRO:** And if we could blow up the email between
25 Mr. Musk and Mr. Dees on August 11th.

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1 (Document enlarged)

2 **MR. SPIRO:** We can go up to the top email on
3 August 11th.

4 (Document displayed)

5 **BY MR. SPIRO**

6 **Q** And you write to Mr. Dees, after the rest of the email
7 chain which is in evidence (As read):

8 "Key question to solve is: Can we put
9 together a diverse enough investor/lender
10 group, such that no single investor can
11 demand special terms? Saudi Arabia would do
12 the entire thing of course, as this is
13 strategically critical to their future, but
14 they would require that we build a
15 Gigafactory there sooner than we would
16 prefer. Hopefully, we can avoid that
17 requirement."

18 Did you send that email to Mr. Dees in the days following
19 your "Am considering" tweet?

20 **A** Yes.

21 **MR. SPIRO:** 825. The Court's already ruled on this,
22 and I would offer 825.

23 **MR. PORRITT:** Is this the complete version now?

24 (Off-the-Record discussion between counsel)

25 **THE COURT:** So 825, with the completeness issue taken

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1 care of, is admitted.

2 (Trial Exhibit 825 received in evidence.)

3 **MR. SPIRO:** Thank you. And as I offer this, can we
4 also publish it to the jury?

5 **THE COURT:** Yes.

6 **MR. SPIRO:** Okay.

7 (Document displayed)

8 **BY MR. SPIRO**

9 **Q** And now, again, days that follow, you, Mr. Musk, to Todd
10 Maron and others (As read):

11 "Yasir has tried to call me several times
12 today, but I will not take the call or agree
13 to a meeting unless he takes action to
14 correct the public record.

15 "There is no question that PIF said they were
16 was all-in for a Tesla take-private when we
17 met two weeks ago and I clarified whether
18 Yasir was the decision-maker and he said yes
19 unequivocally and, moreover, that this was
20 fully backed by the Crown Prince."

21 **A** Exactly. That's exactly what he said.

22 **MR. SPIRO:** I'm going to offer the media story related
23 to this -- and again, we've provided the attachments -- which
24 is Exhibit 332.

25 And again, the defense maintains its objections to news

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1 articles and other things, but given, given the Court's --

2 **THE COURT:** Which --

3 **MR. SPIRO:** This is 332.

4 **THE COURT:** And I overruled the objection, I believe.

5 **MR. SPIRO:** Correct.

6 **THE COURT:** All right. It is admitted.

7 (Trial Exhibit 332 received in evidence.)

8 (Document displayed)

9 **BY MR. SPIRO**

10 **Q** So while this is up on the screen, you know, in that email
11 you had talked about how you didn't want to take Yasir's calls.

12 Do you remember conversations you had with Yasir in the
13 days that followed -- 10th, 11th, 12th -- the "Am considering"
14 tweet? Do you remember those conversations?

15 **A** It has been five years, so --

16 **Q** Okay.

17 **A** So mostly yes, but not with precision after five years.

18 **Q** Okay. And did you know what was going on in the Kingdom
19 of Saudi Arabia in the time that you and Yasir were talking
20 after the "Am considering" tweet?

21 **A** I don't know the inner workings of Saudi Arabia.

22 **Q** You were asked a question about whether or not Yasir would
23 have been concerned about litigation. So, were you aware one
24 way or the other if an announcement had been made, as of that
25 date, that there would be litigation?

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1 **A** For -- the unfortunate reality is that if you are a
2 publicly-traded company, litigation is a guarantee. There --
3 you know. We live in a litigious world.

4 **Q** In the blog post, on August 13th, right, we're -- that the
5 jury's seen, where you say what you say in that email, that he
6 said that he had the full support of the Crown Prince? Do you
7 remember the blog post?

8 **A** Yes. That is what he told me.

9 **Q** Yeah. Do you know whether or not Yasir was having any
10 issues with the Crown Prince as of this date?

11 **A** I -- I don't know.

12 **Q** You were shown some of these text messages between you and
13 Yasir. But you weren't shown all of them. And you said
14 something, and I just want to make sure that this is clear as I
15 turn to Exhibit 121, which is --

16 (Document displayed)

17 **Q** -- were you afraid of being outed as a liar? Or were you
18 afraid of being falsely accused of being a liar when you are
19 fighting or arguing or discussing this with Yasir?

20 **A** The latter. I was concerned that it would appear -- it
21 would appear that I was not truthful, when in fact, I was
22 100 percent truthful.

23 **Q** Okay. And I want to turn now, and again we just looked at
24 the article on August the 12th, saying: Saudi fund in talks to
25 invest in Tesla buyout deal. Saudi fund in talks to invest in

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1 Tesla buyout deal.

2 We are now going to look at 121, and you were shown some
3 messages. If we could go to 8/12 at 26 (As read):

4 "What the hell is going on here? This is
5 false."

6 **MR. SPIRO:** Can we blow that message up? Again, I'm
7 on August the 12th.

8 (Document displayed)

9 **BY MR. SPIRO**

10 **Q** Okay. And you were shown that message, right? And if we
11 could go down to the response from Yasir at 6:59:

12 "It's not true."

13 And just for the Court and jury's benefit, there is also
14 texts between these texts. These happen to be between you and
15 Egon Durban?

16 **A** Yes.

17 **Q** Okay. But the next text from Yasir, when you say "This is
18 false," --

19 **MR. SPIRO:** You can highlight that.

20 (Document highlighted)

21 **BY MR. SPIRO**

22 **Q** He says:

23 "It's not true."

24 **A** Yes. He is confirming that the article is false.

25 **Q** Okay. And you go down -- if we could go down to the next

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1 article. And you and Yasir going back and forth. There's a
2 Bloomberg link, right?

3 (Document highlighted)

4 **Q** I already asked this, Mr. Musk, but there was a bit of a
5 media storm at the time, regarding all this?

6 **A** "A media storm" would be an understatement. A media
7 hurricane.

8 **Q** Okay. And you weren't asked about this message when
9 plaintiff's counsel was asking you questions, but you write
10 (As read):

11 "This is an extremely weak statement and does
12 not reflect the conversation we had at Tesla.
13 You said you were definitely interested in
14 taking Tesla private and had wanted to do so
15 since 2016. You also made it clear that you
16 were the decision-maker..."

17 Did you tell that to Yasir?

18 **A** Yes. That is exactly what happened.

19 **Q** Okay.

20 **Q** Okay. And then finally, I just want to go to 17:14. And
21 if we could -- if we could, 17:29, I guess we can start at.
22 Plaintiff showed you this. Right?

23 (Document highlighted)

24 **Q** This was a large part of your examination on
25 cross-examination. Do you remember this?

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1 **A** Yes.

2 **Q** Okay. But the jury hasn't seen the messages after this.

3 **MR. SPIRO:** Can we go down so that we can highlight
4 those? I guess they are all on the screen, so we can just
5 highlight the messages going down.

6 **BY MR. SPIRO**

7 **Q** And after -- the jury hasn't seen any of these; they just
8 saw the top one. Afterwards you say (As read):

9 "Tesla is a publicly-traded company and there
10 is detailed information in our earnings
11 newsletter and Q & A afterward."

12 **A** Yes.

13 **Q** And then you say:

14 "You bought 5% based on that."

15 **A** That's correct. I think this is -- this is a very
16 important point. That when I first met with Yasir, he said --
17 I said: Well, if you're interested in Tesla, you should buy
18 stock in the public market. You should buy 5 percent in the
19 public market. And he said he would.

20 And there was no -- there was no written agreement, nor
21 was there any discussion of price. And he went ahead and
22 bought 5 percent of the company, again, with no written
23 agreement and no discussion of price.

24 So therefore, it is reasonable to assume that that is how
25 he will operate in the future.

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1 Q After you tell Yasir that he doesn't need financials, he
2 responds, same minute, okay, and he writes:

3 "Details on how we can take the company
4 private."

5 Did I read that right?

6 A Yes. And that's very important. He says "how," not if we
7 can take the company private, but simply the mechanics of what
8 is -- of doing so. The -- there was no "if" there.

9 Q In any of these messages, does he then ask you for
10 financials?

11 A I don't think so. Well, the financials are all public
12 information.

13 Q In any of these messages, does he ask you anything about
14 price in any of these messages? Does he say: That price, I
15 can't do -- does he say that?

16 A No.

17 Q (As read)

18 "Details how about we can take the company
19 private."

20 And then he says:

21 "That's what we agreed on. What is the
22 required percentage and so on."

23 And can you just remind -- did I read that right?

24 A Yes.

25 Q Okay. And can you just remind the jury that -- whether or

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1 not, as of July 31st, you could have possibly known how many
2 shareholders would roll.

3 Did you know that on July 31st?

4 **A** No. It is unknowable until you ask the shareholders.

5 **Q** And if we could keep going to --

6 **A** I may add, we are talking about the Kingdom of Saudi
7 Arabia here. They have more than enough funding to take Tesla
8 private, several times over.

9 **Q** After these text messages that we have been discussing
10 with the jury, did -- do you know whether Yasir called -- a
11 week or so later, called your financial advisers, Egon Durban,
12 and said: Hey, wanna still invest in the take-private?

13 **A** Yes. They confirmed their interest in a take-private.

14 **MR. SPIRO:** And if we could just pull up Exhibit 53.
15 The blog post.

16 (Document displayed)

17 **MR. SPIRO:** And if we could just go to the "Funding
18 secured" section.

19 (Document enlarged)

20 **THE WITNESS:** Exactly.

21 **BY MR. SPIRO**

22 **Q** Was this true?

23 **A** I think this was both true and -- true and precise.

24 **MR. SPIRO:** And if we could go to the last sentence in
25 the second paragraph.

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(Document highlighted)

BY MR. SPIRO

Q And in this blog post you are referring -- just to make sure it's clear for the jury, you were referring to the meeting with the PIF on July 31st, right?

A Yes.

Q Okay.

A Yasir told me that he was the decisionmaker, that he had confirmed with the Crown Prince, and no other decisionmakers were needed. And they wished to move forward as quickly as possible. That's why he called me so many times.

Q And you don't know -- did you ever speak directly to the Crown Prince at that time?

A I've never spoken to the Crown Prince.

MR. SPIRO: I would offer Exhibit 179. That's not in evidence yet. It's a -- I don't believe there is an objection.

MR. PORRITT: No objection, Your Honor.

THE COURT: All right. Admitted.

(Trial Exhibit 179 received in evidence.)

MR. SPIRO: And let's use Exhibit 254, that's already in evidence. 179's the Silver Lake presentation. 254 is the Goldman presentation.

(Document displayed)

BY MR. SPIRO

Q Again, in the days that followed, you can -- did you

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1 continue to meet with Egon Durban, Silver Lake, Dan Dees,
2 Goldman?

3 **A** Yes.

4 **Q** And did they make presentations to you, August 10th or
5 thereabouts?

6 **A** Yes.

7 **Q** Okay.

8 **MR. SPIRO:** If we could go to Page 5 of this
9 presentation.

10 (Document displayed)

11 **MR. SPIRO:** And if we could go to Alternative 2, which
12 I think is what was being discussed with plaintiff. And if we
13 could blow that, the middle one up, and if we could blow that
14 up even more, potentially.

15 (Document displayed)

16 (Document enlarged)

17 **MR. SPIRO:** Okay.

18 **BY MR. SPIRO**

19 **Q** And do you see that on the -- it says (As read):

20 "Funding before existing roll"

21 And it's under 50 billion?

22 **A** Sorry, yes, 49.8.

23 **Q** Right.

24 And then it said -- it says at the bottom, "Incremental"

25 -- it gives then some percentages about funding existing before

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1 the roll, 49.8; it gives estimates of roll?

2 Do you see that?

3 **A** Yes.

4 **Q** And it says "Incremental financing needed." Do you see
5 that?

6 **A** Yes.

7 **Q** This incremental financing needed, okay -- and by the way,
8 20 versus a little under 50 is -- it seems like 60-ish, 60,
9 62 percent of this, they're saying roll? Is that about right?

10 A little over 60 percent?

11 **A** I think they're -- yes. They're underestimating in this
12 case how many would roll. I think the incremental financing
13 need would actually be much less than 20 billion.

14 **Q** Sure --

15 **A** The conservative estimate.

16 **Q** Sure. No question. But on this, I just want to make sure
17 I get a clean answer.

18 Again, they're saying of the 49-ish, about 62 percent or
19 so would roll. Right? Which is why you're left with 20. Is
20 that right?

21 **A** Yes.

22 **Q** Now, of the 20, the conservative estimate of how many
23 would roll, this would include zero additional capital from
24 you?

25 **A** Yeah.

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1 Q Zero from Ron Baron?

2 A Right.

3 Q Zero from Larry Ellison?

4 A Right.

5 Q Zero from Silver Lake?

6 A Right. That --

7 Q Zero from the PIF?

8 A Right. That's why I'm saying it's -- this 20 billion
9 number is actually extremely conservative. The real number
10 would be much less than that. And, in fact, it would be
11 over-subscribed.

12 Q Zero from bank financing, bank debt.

13 A And, and also, as I mentioned before, I could do it with
14 my SpaceX ownership as well. That would be a huge contributor.

15 Q Zero --

16 A But I don't think it would have been necessary to use my
17 SpaceX stock.

18 Q Sure. I'm just talking about even their conservative case
19 before we include any of these things.

20 A Yes.

21 Q It has zero increase from any single existing investor.
22 Zero increase. Is that a yes?

23 A Yes.

24 Q Okay. So, we have the blog post of the 13th. And let's
25 just go very, very quickly to -- back to the text messages,

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1 121, Page 89.

2 (Document displayed)

3 **Q** All right. So at this point -- by the way, just to make
4 sure that we are clear on all of this. At this point, you are
5 still just considering, right?

6 **A** Yeah. Yes.

7 **MR. SPIRO:** And if you go to Page 9.

8 (Document enlarged)

9 **MR. SPIRO:** And if we could go to Egon Durban at the
10 bottom there, we're on the 11th of August.

11 **BY MR. SPIRO**

12 **Q** Remember, we talked about Dan Dees and what he told you on
13 the 10th. Now we're on the 11th. And Mr. Durban is saying to
14 you:

15 "Our largest investor..."

16 It's redacted.

17 "...reached out to us today proactively on
18 your company. We said nothing. This can be
19 done."

20 **A** Yes.

21 **Q** Back to -- was there any equivocation in your mind when
22 you received a text from Egon Durban of Silver Lake, and he
23 told you on the 11th, "This can be done"?

24 **MR. PORRITT:** Objection. Leading, Your Honor.

25 **THE COURT:** Sustained.

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1 **MR. SPIRO:** Can we pull up 53, please.

2 (Document displayed)

3 **BY MR. SPIRO**

4 **Q** Now, you testified that there was a -- "a media storm"
5 would be an understatement. We looked at the Ron Baron email.

6 Did you know whether or not at the time of this blog post,
7 questions, media reports were circling about this possible
8 transaction?

9 **A** I'm sorry, what, what point in time?

10 **Q** We're now -- the blog post that we're talking about, the
11 second blog post, is on the 13th. Okay.

12 (Counsel writes on easel)

13 **A** Yes, okay.

14 **Q** And at the time, you testified that, I think in words or
15 substance, that a media storm is an understatement.

16 As of August 13th, you know, one, two, three business days
17 after the "Am considering" tweet, was the media and questions
18 still circling?

19 **A** Media hurricane, yes.

20 **Q** And before market opened on the 13th, did you issue a blog
21 post?

22 **A** Yes.

23 **MR. SPIRO:** And if we could go down to -- we are not
24 going to go through this whole thing, for time's sake, but if
25 we could go down to the paragraph "Therefore, reports that...".

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1 (Document displayed)

2 **BY MR. SPIRO**

3 **Q** In this blog post, are you answering a variety of
4 questions and adding information?

5 **A** Yes.

6 **Q** Okay. We are going to deal with one.

7 "Therefore, reports that more than
8 70 billion..."

9 Do you see that?

10 **MR. SPIRO:** And this is being published to the jury?

11 (Members of the Jury indicate in the affirmative)

12 **THE COURT:** Maybe you can highlight -- I just see one
13 big page.

14 **MR. SPIRO:** That's what I was asking my colleagues, if
15 they could, just to make it easier.

16 (Document displayed)

17 **MR. SPIRO:** And then we're also going to talk about
18 Mr. Musk's tweets on August 13th.

19 (Document displayed)

20 **BY MR. SPIRO**

21 **Q** There we are. And you say:

22 "Therefore, reports..."

23 Okay. What are you referring to when you say "reports"?

24 **A** Media stories.

25 **Q** Okay.

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1 "...that more than 70 billion would be needed
2 to take Tesla private dramatically overstate
3 the actual capital raise needed. The 420
4 buyout price would only be used for Tesla
5 shareholders who do not remain with our
6 company if it is private. My best estimate
7 right now is that approximately two-thirds of
8 shares owned by all current investors would
9 roll over into a private Tesla."

10 Do you see that?

11 **A** That is correct.

12 **Q** And in your cross-examination, you know, you -- you know,
13 you were said to be untruthful when you said your best
14 estimate. Do you remember those points in cross-examination?

15 **A** Yes.

16 **Q** And as the jury has now seen, a day, a business day
17 earlier, Goldman Sachs, top investment banker in the world, had
18 estimated 62 percent of shares that would roll. And you are
19 saying in this blog post, two-thirds of shares. So you are
20 saying 66 percent.

21 **A** Yes. And, in fact, I would say the Goldman estimate was
22 conservative, it was on the low side, because not only would
23 roughly two-thirds of shareholders roll their shares into Tesla
24 as a private company, but I'm confident that many would have
25 increased their stake.

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1 **Q** Okay. Well, I don't know if you know, you were called a
2 liar about this. But your estimate -- Goldman's estimate, 62,
3 your estimate, your best estimate in the blog -- this is
4 Elon -- is 66.

5 (Counsel writes on easel)

6 **MR. SPIRO:** I'm not going to try to move this.
7 Well -- no. Not going to --

8 **THE WITNESS:** I say "approximately two-thirds," so as
9 not to -- you know. Hard to -- anyway. We were basically
10 saying the same thing.

11 (Counsel writes on easel)

12 **MR. SPIRO:** So again, on the 10th, Goldman Sachs
13 estimates 62. On the 13th, when the market opens, you estimate
14 66.

15 Exhibit 361.

16 (Document displayed)

17 **THE COURT:** Are you asking 361 to be admitted?

18 **MR. SPIRO:** Yes. I was just checking my notes,
19 myself. This has not been admitted. I would be offering 361.

20 **MR. PORRITT:** No objection, Your Honor.

21 **THE COURT:** All right. Admitted. You may publish.

22 (Trial Exhibit 361 received in evidence.)

23 **MR. SPIRO:** And if we can just blow that up so the
24 jury can see.

25 (Document enlarged)

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1 **BY MR. SPIRO**

2 **Q** On this, on the 13th, again, there's a tweet and a blog
3 post. Do you intend for the blog post and the tweet to be read
4 together?

5 **A** Yes.

6 **Q** Okay. And you say:

7 "I'm excited to work with Silver Lake and
8 Goldman Sachs as financial advisers..."

9 Okay. And we talked about meetings, presentations,
10 conversations, the emails.

11 Mr. Musk, are you aware that the plaintiff sued you for
12 fraud based on this tweet?

13 **MR. PORRITT:** Objection, Your Honor. I'm not sure of
14 the purpose of this question. Seems improper.

15 **THE COURT:** Sustained.

16 **BY MR. SPIRO**

17 **Q** Are you -- when you sent this tweet, okay, did you
18 technically have a signed engagement letter with Goldman Sachs
19 or Silver Lake?

20 **A** No. But they had told me they were excited to work with
21 me on this transaction. They're -- yeah.

22 **Q** Okay.

23 **A** This is -- this is -- they were very excited to work with
24 me, as their emails clearly indicate.

25 **Q** Okay. And did you run this statement by them before you

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1 issued it?

2 **A** No. It's factually true.

3 **Q** Did you intend to deceive shareholders when you said that
4 you were working with them, even though you didn't have a
5 signed engagement letter, Mr. Musk? Were you trying to deceive
6 your investors?

7 **A** No, I -- I already was working with them. That is
8 factually true.

9 **MR. SPIRO:** Exhibit 101.

10 **BY MR. SPIRO**

11 **Q** And we're almost done. This is in evidence. These are
12 the board minutes. We could pull up the attendee list.

13 (Document displayed)

14 **BY MR. SPIRO**

15 **Q** Again, others present, there's lawyers and advisers,
16 right? And that first name, Deepak Ahuja.

17 (Document highlighted)

18 **Q** Was he at that meeting with you on July 31st with the PIF?

19 **A** Yes, he was.

20 **MR. SPIRO:** And if we could go down.

21 **BY MR. SPIRO**

22 **Q** Mr. Musk said on Point 1, okay:

23 "He noted that there was more than enough
24 funding for any proposed transaction..."

25 Did you say that at the board meeting?

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1 **A** Yes.

2 **Q** Was that true?

3 **A** Yes.

4 **Q** And if we could go down to Page 3, the board discussed
5 this with your financial advisers (As read):

6 "...assuming they would need to raise
7 approximately 30 billion to finance the
8 transaction. The financial advisers
9 emphasized to the board that although their
10 work was preliminary, the funding was
11 available from a variety of sources."

12 **A** Yeah.

13 **Q** (As read)

14 "The Goldman Sachs and Silver Lake
15 representatives indicated that they had
16 substantial experience with these types of
17 transactions, and while taking Tesla private
18 would be unique, there was more than enough
19 interest and funding to execute on such a
20 transaction."

21 Did I read that right?

22 **A** Yes.

23 **Q** Was that what they said at the board meeting?

24 **A** Yes. They made it clear that there was -- it was quite
25 literal. Not -- not merely that there would be enough funding,

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1 but that there would be far more than enough funding.

2 Over-subscribed.

3 **Q** So fair to say, just like you said on August 7th, funding
4 wasn't an issue?

5 **A** Funding was absolutely not an issue. Quite the opposite.
6 More funding was available than was necessary for the
7 transaction.

8 **MR. SPIRO:** 229.

9 **BY MR. SPIRO**

10 **Q** Did you eventually announce the following day that Tesla
11 would be staying public?

12 (Document displayed)

13 **A** Yes.

14 **Q** Why, with the available funding, a possible structure that
15 would work, why did you remain public?

16 **A** After talking to a number of the investors, especially the
17 small -- smaller investors, they said that they would prefer
18 that Tesla remain public. And I -- I felt it was important to
19 be responsive to their wishes.

20 **Q** We are not going to go through this whole document either,
21 but if we could go to the last paragraph, sort of where this,
22 you know, two-week or so consideration ended.

23 (Document enlarged)

24 **Q** After considering --

25 **A** Yeah.

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1 **MR. SPIRO:** Yeah, can we go down to the last
2 paragraph, please?

3 (Document highlighted)

4 **MR. SPIRO:** And, further? Can you go down a page?

5 (Document displayed)

6 **BY MR. SPIRO**

7 **Q** (As read)

8 "Moving forward, we will continue to focus on
9 what matters most: Building products that
10 people love and that make a difference to the
11 shared future of life on Earth."

12 Did you say that?

13 **A** Yes.

14 **Q** And you talked about Model 3?

15 **A** Yes.

16 **Q** And then, can you just read the last part.

17 **A** The "Thank you" part?

18 **Q** Yeah.

19 **A** (As read)

20 "Thank you to all of our investors, customers
21 and employees for the support you have given
22 our company. I'm incredibly excited to
23 continue leading Tesla as a public company.
24 It is a privilege."

25 **Q** And did you mean what you said?

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1 **A** Absolutely.

2 **Q** Throughout this entire process -- which, again, we're
3 talking about this, you know, the two-week consideration.

4 And by the way, how long, since your first involvement in
5 Tesla, how many, you know, decades, years, have you been
6 involved in Tesla from now, from the very beginning?

7 **A** It's been almost 20 years.

8 **Q** Okay. So we're talking this two weeks, the "I am
9 considering," in 20 years.

10 (Counsel writes on easel)

11 **Q** Okay. During those two weeks that we have been talking
12 about, did you ever try to deceive your investors?

13 **A** No.

14 **Q** Did you ever sell a single share?

15 **A** Up until that point, up until that point, no. Um --

16 **Q** Okay. Now --

17 **A** Well, sorry. I think there might have been a small sale
18 of shares at the -- at the IPO in order to not have debt.

19 But --

20 **Q** I'm asking you only about the two-week "Am considering"
21 period.

22 **A** No, no. No shares were sold anywhere around that period.

23 **Q** Okay. Now, you were also asked about a *New York Times*
24 article. Do you know how many thousands of articles came out
25 during that two weeks about this?

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1 **A** Many thousands of articles.

2 **Q** What about like blogs or tweets? Do you know how many?
3 Tens of -- do you have any idea?

4 **A** Tens of thousands, I --

5 **Q** Okay.

6 **A** Yeah.

7 **Q** Well, they showed you a *New York Times* article, or they
8 are asked you about a *New York Times* article, but they didn't
9 enter it into evidence.

10 **MR. SPIRO:** So with all of my same objections,
11 including that relevance, at this time, if the Court's going to
12 let this exhibit in, we would admit it so I can ask questions.

13 **THE COURT:** The *New York Times* article?

14 **MR. SPIRO:** Yeah. Exhibit 171.

15 (Reporter clarification)

16 **THE COURT:** The *New York Times* article --

17 **MR. SPIRO:** Right.

18 **THE COURT:** -- is what he is asking about, 171. I
19 thought I had had already indicated that was -- hasn't that
20 already been admitted?

21 **MR. SPIRO:** Has not been. So I'm -- again, I want to
22 make sure that I'm maintaining my objections. But the Court
23 asked me if I'm calling Mr. Musk back for a fourth day later in
24 my case. And since I have him here, I thought I would ask him
25 about this.

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1 **THE COURT:** Okay, it's admitted.

2 (Trial Exhibit 171 received in evidence.)

3 **MR. SPIRO:** Okay. If we could just blow up the title.

4 (Document displayed)

5 (Document enlarged)

6 **BY MR. SPIRO**

7 **Q** (As read)

8 "Elon Musk Details 'Excruciating' Personal

9 Toll Of Tesla Turmoil."

10 Mr. Musk, was 2018, I think you already said this. Was it
11 a long year?

12 **A** Yes.

13 **Q** And I'm not going to make you relive all this, but it says
14 (As read):

15 "This past year has been the most difficult
16 and painful year of my career. It was
17 excruciating."

18 Goes on to say:

19 "He" -- meaning you -- "choked up multiple
20 times, noting that he nearly missed his
21 brother's wedding this summer and spent his
22 birthday holed up in Tesla's offices as the
23 company raced to meet elusive production
24 targets on a crucial new model."

25 **A** Yes. That is when I was literally living in the factory.

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1 **Q** (As read)

2 "It's not been great, actually. I've had friends
3 come by who are really concerned."

4 Did you say those things or things like them to the *New*
5 *York Times* reporter when you were on the phone with them?

6 **A** Yes.

7 **Q** Okay. Did you ever tell them that this whole "Am
8 considering" was a hoax and a lie you created to deceive
9 investors?

10 **A** Not at all.

11 **Q** Did you ever tell them that there was no funding you were
12 in touch with, funding was far from -- far from secured?

13 **A** No.

14 **Q** And --

15 **A** I mean -- yeah.

16 **Q** That toll -- that toll that that took on you that year,
17 you know, has that toll stayed with you, Mr. Musk?

18 **MR. PORRITT:** Objection, Your Honor, relevance.

19 **THE COURT:** Sustained.

20 **BY MR. SPIRO**

21 **Q** Let me ask you this, Mr. Musk: In your 35-year business
22 career since you came over here with nothing, have you ever
23 tried to deceive your shareholders or investors?

24 **A** No, I've never done so. That -- the reason that it is
25 easy for me to find investors' support is because they know

1 that I have always been truthful.

2 **MR. SPIRO:** I have no further questions at this time.

3 **THE COURT:** All right. Thank you. Redirect?

4 **MR. PORRITT:** Your Honor, looking at the time, two
5 minutes past 10:00. Coming up to 10:00.

6 **THE COURT:** All right.

7 **MR. PORRITT:** Perfect for a break now.

8 **THE COURT:** All right. I take it your redirect is
9 going to take more than two minutes.

10 **MR. PORRITT:** More than two minutes, but hopefully not
11 too much longer.

12 **THE COURT:** All right. Why don't we take our
13 scheduled break for 20 minutes.

14 The usual reminder: Do not discuss anything about this
15 case with anyone, including amongst yourselves. Do not listen
16 or read of any coverage. Do not do any research. And do not
17 form any opinions until this case is submitted to you for
18 deliberation.

19 We will see you in 20 minutes.

20 **THE COURTROOM DEPUTY:** All rise for the jury.

21 (Jury excused)

22 (The following proceedings were held outside of the
23 presence of the Jury)

24 **THE COURT:** All right. See you in 20.

25 **THE COURTROOM DEPUTY:** Court is in recess.

MUSK - REDIRECT / PORRITT

1 (Recess taken from 9:59 a.m. to 10:22 a.m.)

2 (The following proceedings were held outside of the
3 presence of the Jury)

4 **THE COURT:** Okay, ready to bring the jury back?

5 **THE COURTROOM DEPUTY:** I am.

6 **THE COURT:** All right.

7 By the way, we are still waiting for the redacted
8 Exhibit 21 to be submitted to the Court, because we are
9 supposed to post that on our server.

10 **MR. SPIRO:** Yes, Your Honor. That will be done in the
11 next, I would expect, day or so.

12 **THE COURT:** Okay. Thank you.

13 (A pause in the proceedings)

14 (The following proceedings were held in the presence of
15 the Jury)

16 **THE COURTROOM DEPUTY:** All rise for the jury.

17 **THE COURT:** All right, please be seated. Welcome
18 back, ladies and gentlemen.

19 We are going to proceed with the redirect examination by
20 Mr. Porritt of Mr. Musk.

21 **MR. PORRITT:** Thank you, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MR. PORRITT**

24 **Q** Good morning, Mr. Musk.

25 **A** Good morning.

MUSK - REDIRECT / PORRITT

1 **Q** I want to take you to a -- you recall testifying in
2 response to questions from your counsel regarding meetings you
3 had with Dan Dees and Egon Durban following your August 7th
4 tweets?

5 Do you recall that testimony?

6 **A** Yes.

7 **Q** And you testified regarding receiving presentations from
8 both Goldman Sachs and Silver Lake during that process,
9 correct?

10 **A** I mean, I saw what everyone else saw.

11 **Q** Okay. Well, you received a presentation from Silver Lake
12 August 10th, 2018, correct?

13 **A** If you wish to present the document, I -- if there is more
14 to it that --

15 **Q** Fair enough.

16 **A** I'm not sure what you're getting at.

17 **MR. PORRITT:** Can we bring up Exhibit 179.

18 (Document displayed)

19 **MR. PORRITT:** Just the first page for now.

20 **BY MR. PORRITT**

21 **Q** Do you see that?

22 **A** I -- I see it says "Project Turbo."

23 **Q** Okay. And "Turbo" was Silver Lake's code name for Tesla?

24 **A** I assume so.

25 **Q** Okay.

MUSK - REDIRECT / PORRITT

1 **MR. PORRITT:** Is this being published to the jury?

2 **THE COURTROOM DEPUTY:** It is.

3 **MR. PORRITT:** Okay. Thank you.

4 **THE COURTROOM DEPUTY:** You're welcome.

5 **BY MR. PORRITT**

6 **Q** If you can turn to Page 29. So this is dated August 10,
7 2018, and Mr. Spiro had his fancy calendar. That's the Friday
8 after your tweets, correct?

9 **A** I -- I assume so.

10 **Q** Okay.

11 **A** Bring the calendar up, if that would be helpful.

12 **Q** If we can turn to Page 29. This is part of Silver Lake's
13 presentation to you on August 10th. You notice the first point
14 on that presentation, which is that they plan to submit a
15 formal proposal to the board following arrangement of committed
16 financing. Do you see that?

17 **A** Yes.

18 **Q** That hadn't been done by August 10th, had it?

19 **A** No. Because we would need to talk to the investors to
20 find out who would be staying in Tesla as a private company
21 versus a public company. So that would require talking to --
22 finding out who wished to stay.

23 **Q** And isn't it true that you never, neither Silver Lake nor
24 Goldman Sachs, ever obtained committed financing from anybody
25 in connection with the go-private transaction. Isn't that

MUSK - REDIRECT / PORRITT

1 correct?

2 **A** I don't think that's an accurate assessment, no. I think
3 you're wrong.

4 **Q** You -- all this talk about potential -- about Ron Baron
5 funds, did you ever get committed financing from Ron Baron
6 funds?

7 **A** I mean, he -- he -- Ron Baron is a -- someone who sticks
8 to what he says. And if he says he's going to do it, he's
9 committed.

10 **Q** So, did he -- how much money -- how much financing did Ron
11 Baron commit?

12 **A** I don't recall the exact number.

13 **Q** Did you commit any number?

14 **A** He committed to financing the transaction.

15 **Q** He didn't commit any amount. He didn't commit one dollar
16 that you could actually point to on a piece of paper, did he?

17 **A** No, he committed to the financing.

18 **Q** Okay. But no amount of financing was committed by Ron
19 Baron, for instance?

20 **A** He committed to the financing. As did the Saudi PIF.

21 **Q** Right. Okay. And as you talked about with the Saudi PIF,
22 you never discussed an amount of funding you needed from the
23 Saudi PIF either, did you?

24 **A** I think we had some discussions. But they -- we're
25 talking about the Kingdom of Saudi Arabia here. They could

MUSK - REDIRECT / PORRITT

1 literally buy Tesla several times over.

2 **Q** All right --

3 **A** This is not a large amount of money for them.

4 **Q** Mr. Musk, the question was: You didn't talk a specific
5 amount of funding with the Saudi PIF, did you?

6 **A** I believe we did have some discussion of amounts. And
7 they're fully aware; they were already an investor in Tesla.
8 They had 5 percent of the company. And they are sophisticated
9 investors. So they knew what would be required to take Tesla
10 private. And they committed to do so.

11 **Q** You didn't -- you testified yesterday that the July 31st
12 meeting with PIF, you never discussed an actual amount of
13 funding. Are you changing your testimony now?

14 **MR. SPIRO:** Objection to that characterization.

15 **THE COURT:** I don't think he's changed his testimony.
16 He's not testified to -- why don't you ask again. Ask the
17 question.

18 **BY MR. PORRITT**

19 **Q** You testified yesterday that at the July 31st meeting with
20 the PIF, you did not discuss an actual amount of funding. Do
21 you recall that testimony?

22 **A** Um, there was some discussion of the value of the company,
23 but in order to say what the exact amount would be, we would
24 need to first talk to other investors to see who would remain.
25 But as for whether the Saudi PIF was committed to the take

MUSK - REDIRECT / PORRITT

1 Tesla private, they absolutely were.

2 It really feels like you're trying to use the word
3 "commitment" in a way that's not intended.

4 **Q** The question is here is you did not discuss with the
5 PIF -- and I'm asking this question now for about the fourth
6 time -- an actual amount of funding on July 31st. It's a very
7 simple question.

8 **THE COURT:** And I would like you to answer that
9 question first, then I'll allow you to answer. It's a
10 yes-or-no response. And I think the word is not "commit," you
11 said "discuss" a specific amount. That's your question?

12 **MR. PORRITT:** Correct. Yes, Your Honor.

13 **THE COURT:** Was a specific dollar amount discussed.

14 **THE WITNESS:** I mean, we discussed broadly what it
15 would take to have Tesla go private. But what was -- the
16 salient point is that they gave an unequivocal commitment.
17 Essentially, no matter what it takes.

18 **MR. PORRITT:** Your Honor --

19 **BY MR. PORRITT**

20 **Q** Well, that's still not answering my question, though, is
21 it, Mr. Musk? I'm not talking about their commitment to the
22 concept of going private.

23 I'm asking: Did you discuss an actual amount of funding
24 needed from the PIF at the July 31st meeting? That's an easy
25 yes-or-no question. Can you answer it, please?

MUSK - REDIRECT / PORRITT

1 **A** Effectively, yes.

2 **Q** Effectively, yes.

3 **A** Yes.

4 **Q** What dollar amount of funding did you discuss with the PIF
5 on the July 31st meeting?

6 **A** There would be an amount -- you -- there's an amount
7 that's needed to take the company private, which would be all
8 investors who did not participate. Yeah. Which would be the
9 difference between the committed investors and those who --
10 those who wished to stay with Tesla private, and those who did
11 not.

12 But the -- but I think you're glossing over the salient
13 point here, which is that they committed, no matter what it
14 took.

15 **Q** You're glossing over my question, which is: You didn't
16 know what number of -- amount of funding you needed on
17 July 31st.

18 **THE COURT:** Why don't you ask the question in terms
19 of: Was a specific number discussed? Not concepts. Number.

20 **THE WITNESS:** Not -- not a specific number because --

21 **MR. PORRITT:** Thank you. I think you've answered the
22 question now. Thank you.

23 **THE COURT:** Next question.

24 **BY MR. PORRITT**

25 **Q** And wasn't that true for all the investors that you spoke

MUSK - REDIRECT / PORRITT

1 to in -- regarding -- in response to questions from your
2 counsel regarding Larry Ellison, you didn't discuss a specific
3 number with Larry Ellison either, did you?

4 A No, but I knew what --

5 Q Thank you.

6 A Okay.

7 Q The major investor in Silver Lake that Mr. Durban referred
8 to in a text message, you didn't have a specific number for
9 his -- their participation either, did you?

10 A No.

11 Q All right. You didn't have a specific number from Ron
12 Baron, did you?

13 A No.

14 Q You didn't have a specific number, in fact, from any of
15 the potential participants in funding a going-private
16 transaction, did you?

17 A Well, I mean, I certainly had one for myself.

18 Q What do you mean by that?

19 A I mean, certainly I would be committed. I would -- my
20 shares would be there.

21 Q Your Tesla shares, you mean?

22 A Yes.

23 Q Okay. Thank you.

24 A Yeah.

25 Q So if we go back to 254.

MUSK - REDIRECT / PORRITT

1 (Document displayed)

2 **MR. PORRITT:** And I think either Page 4 or 5 of the
3 exhibit.

4 (Document displayed)

5 **MR. PORRITT:** Go forward again, sorry. One more, one
6 more.

7 (Documents displayed)

8 **MR. PORRITT:** You know, strike that. Sorry. I don't
9 have the -- I have the wrong reference for the exhibit.

10 **BY MR. PORRITT**

11 **Q** Now, your counsel, Mr. Spiro, showed you some
12 correspondence with Dan Dees at Goldman Sachs. Correct?

13 **A** Yes.

14 **Q** And Dan Dees has essentially been one of your investment
15 bankers for many years, correct?

16 **A** Dan Dees is, um, one of the -- he heads-up -- yes, he has
17 been, yes.

18 **Q** Okay. He's assisted on those financings we talked about
19 in your testimony, it seems a long time ago now, the money
20 you've raised with Tesla, correct?

21 **A** Dan Dees and Goldman have raised -- it might be tens of
22 billions of dollars at this point for Tesla.

23 **Q** And for those services, Goldman Sachs -- you've paid
24 Goldman Sachs or Tesla has paid Goldman Sachs millions of
25 dollars in fees.

MUSK - REDIRECT / PORRITT

1 Correct?

2 **A** It is normal to pay fees for investment bankers.

3 **Q** Okay. And you've paid them to Goldman Sachs for them
4 raising money for Tesla, correct?

5 **A** It's like buying a house. You always pay fees to the --
6 you know, the agent.

7 **Q** And if that going-private transaction went ahead, Goldman
8 Sachs would receive a large fee if it were successful, correct?

9 **A** They would receive the standard fee, just like -- like I
10 said, like a real estate agent selling a house would.

11 **Q** Okay. Once all the paperwork was completed, correct?

12 **A** Assuming -- if the transaction went through, they who
13 receive a fee. This is normal.

14 **Q** Okay. In the millions of dollars?

15 **A** Yes.

16 **Q** Hundreds of millions of dollars?

17 **A** I don't -- no, I don't think so.

18 **Q** Okay.

19 **MR. PORRITT:** Now, if you can put up Exhibit 8 on to
20 the screen, please. Publish to the jury.

21 (Document displayed)

22 **BY MR. PORRITT**

23 **Q** Now, you've said -- described your wording in this text as
24 you thought it was very clear. Is that correct?

25 **A** Yes.

MUSK - REDIRECT / PORRITT

1 **Q** Okay. And "Funding secured" is very clear too, correct?

2 **A** I think it's -- yes. I think that is -- that was my firm
3 belief.

4 **Q** Okay. And you -- I think you testified in your direct
5 that you -- "Funding secured" is once of the three main points
6 that you wanted to communicate with that tweet. Is that
7 correct?

8 **A** It's -- there are three points in this tweet. Yeah.

9 **Q** Okay. And they were the three salients point you wanted
10 to communicate, correct? Considering taking private, at 420,
11 and funding secured at 420. Isn't that correct?

12 **A** Yes.

13 **Q** So "Funding secured" wasn't some throwaway line that you
14 just added to the end of the tweet. Correct?

15 **A** It meant that I was highly confident of the funding. That
16 funding would not be an issue. And it obviously was not. The
17 evidence makes that clear.

18 **Q** Now, Mr. Spiro went through with you some of your next
19 messages with Yasir. Do you recall that testimony?

20 **MR. PORRITT:** If we can bring up Exhibit 121?

21 (Document displayed)

22 (Witness examines document)

23 **MR. PORRITT:** Before we go there, I apologize, sorry.

24 (Document taken off display)

25 **MR. PORRITT:** If you can bring up Exhibit 12. I

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1 apologize. We'll finish this line.

2 (Document displayed)

3 **BY MR. PORRITT**

4 **Q** Exhibit 12, this is the email drafted for you by Tesla,
5 correct?

6 **A** Drafted with Tesla. You know, for me, but with -- with
7 Tesla people.

8 **Q** And you've testified about how you were -- you had a role
9 as bidder, not as Tesla's CEO. Do you recall that testimony?

10 **A** Yes.

11 **Q** Okay. You still thought it was appropriate to draw on
12 Tesla resources to draft your statements? Or to draft
13 statements regarding this going-private transaction?

14 **A** I had -- for information purposes, yes.

15 **Q** So when you are drafting this email, this email was a
16 joint communication strategy between you and Tesla. Is that
17 fair?

18 **A** No, it's just specifically saying that this email was sent
19 to Tesla employees, because I thought it was important to keep
20 them informed of what was going on, so they did not take the
21 information from the media because the media is often wrong.

22 **Q** And at this time, you're thinking about taking Tesla
23 private at 420, correct?

24 **A** Yeah. Yes.

25 **Q** All right.

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1 **A** It says that.

2 **Q** And your public tweets have an effect on Tesla stock
3 price. Correct?

4 **MR. SPIRO:** Objection, vague.

5 **THE COURT:** Sustained.

6 **BY MR. PORRITT**

7 **Q** You expected Tesla stock price to increase after you
8 issued your August 7th tweets, correct?

9 **A** Not correct.

10 **Q** I think you testified yesterday that you understood that
11 your -- the stock price would go up if -- after you made the
12 August 7th tweets.

13 **A** No, actually, what I said was that you cannot predict the
14 movement of the share price based on a tweet, because very
15 often the opposite thing occurs with the stock price from what
16 you would expect from the tweet.

17 That's why I used the example that when I tweeted that I
18 -- Tesla stock price was too high, the stock price actually
19 went higher. You would expect that if I tweeted that the stock
20 price was too high, that the stock would go lower. So what
21 you're saying is not true.

22 **Q** If your public statements could affect Tesla's stock
23 price, and you're bidding at a point regarding purchasing Tesla
24 at a particular stock price, doesn't that put you in a conflict
25 of interest regarding -- about the statements you would be

MUSK - REDIRECT / PORRITT

1 making?

2 **MR. SPIRO:** Objection, is this a conflict of interest
3 trial? I don't see the relevance.

4 **THE COURT:** I'm not sure what the relevance is.

5 **BY MR. PORRITT**

6 **Q** You've stated that you felt that it was important -- that
7 the board should not be controlling your communications to the
8 public, as you, as a bidder, you should have had complete
9 authority to tweet whatever you wanted. Isn't that correct?

10 **A** Um, it is important to separate the role of bidder from
11 that of CEO. The -- you know, I have no choice but to wear
12 both hats in this situation. But the -- yeah, the -- the board
13 has to represent the shareholders, the public shareholders.
14 And I have to represent those who wish to take Tesla private.

15 **Q** All right --

16 **A** In this -- in this case. You know, in this instance.

17 **Q** And isn't that why you would have a special committee in
18 place that could then manage disclosures or make sure that
19 you're not able to potentially manipulate the Tesla stock price
20 while in the process of negotiating an acquisition? Isn't that
21 correct?

22 **A** I'm not sure what you mean.

23 **Q** Well, you understood the special committee should -- once
24 appointed, would control the disclosures over the going-private
25 transaction?

MUSK - REDIRECT / PORRITT

1 **A** No, I believe that you are -- what you're saying is false.
2 The special committee would be speaking on behalf of the
3 company; I would be speaking on behalf of the bidders.

4 **Q** Let's go back -- well, if you go back to Exhibit 12,
5 again, this statement that was drafted for you by Tesla, and
6 you said you were seeking for transparency in your disclosures
7 on August 7th. Is that correct?

8 **A** Yes.

9 **Q** Okay. As we have gone over multiple times, there is
10 nothing about funding in this Exhibit 12, is there?

11 (Witness examines document)

12 **A** I don't know if -- I -- the whole -- I can't see the whole
13 thing, but -- um, so...

14 **Q** Well, feel free to read it as long as you need to.

15 **A** Okay.

16 **THE COURT:** It may be in a binder too if you want
17 to --

18 **THE WITNESS:** Okay.

19 **THE COURT:** -- look at a hard copy.

20 **BY MR. PORRITT**

21 **Q** Oh, in the binder, it's Exhibit 12. You should have your
22 witness binder in front of you.

23 (Witness examines document)

24 **A** Well, actually, I mean, it does talk about funding because
25 it -- the first point that I make there is that I want this to

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1 be the -- for the benefit of shareholders, and abide by
2 shareholder wishes.

3 And so I'm clear that I would prefer shareholders to
4 remain with Tesla as a private company, but would respect their
5 choice if they did not wish to remain. So that -- that
6 obviously speaks to funding.

7 **Q** Why does that obviously speak to funding? It doesn't
8 mention funding.

9 **A** Because the funding needed is dependent on how many
10 shareholders stayed with Tesla as a private company. So, what
11 I'm saying here is that I -- I hope that -- my specific
12 statement is I hope for all shareholders to remain, but if they
13 prefer to be bought out, then this would happen at a premium
14 for them.

15 **Q** And you think that is communicating to investors about the
16 source of funding?

17 **MR. SPIRO:** Objection, he's mischaracterizing, and now
18 he's changed and added the word "source."

19 **THE COURT:** Well, he can ask that question.

20 **MR. SPIRO:** Sure. He can ask a question about source
21 of funding, sure.

22 **THE COURT:** I guess that's the question.

23 **THE WITNESS:** Yeah, I mean, I think you're -- what
24 you're doing is -- this is -- as it says at the top, this is an
25 email to Tesla -- "The following email was sent to Tesla

MUSK - REDIRECT / PORRITT

1 employees..." So this is not an investor email.

2 **BY MR. PORRITT**

3 **Q** Well, it was always intended to publish this email, wasn't
4 it? Publicly.

5 **A** The reason the email was posted to the website was because
6 it was leaked to the media. It -- that, that -- the media got
7 ahold of it. So it was simply to make -- make clear that this
8 was sent to Tesla employees. But --

9 **Q** That was posted to the blog post within seconds of it
10 being sent to Tesla employees.

11 **A** Yes, but you are -- I think you are trying to take
12 something in the wrong context here. This is an email to Tesla
13 employees, not an email to investors. So --

14 **Q** This was -- sorry.

15 **A** -- why are you bringing up an email to Tesla employees?

16 **Q** This was always going to be published to the Tesla blog
17 post, correct? Publicly.

18 **A** The email was leaked to the media with the promise that
19 the email -- when the media writes about a Tesla email, they
20 will -- they will pick parts of the email, but not the whole
21 email. So the media will not show the whole email.

22 And if the media -- so to avoid having investors
23 misunderstand what was a company email because of the media
24 taking quotes out of context, it was important to show the full
25 email so that the media could not take parts of an employee

MUSK - REDIRECT / PORRITT

1 email out of context.

2 **Q** When was this email leaked to the media?

3 **A** I don't know.

4 **Q** This email was -- as I said, was posted to the blog post
5 within seconds of you sending it to Tesla employees. It was
6 leaked in those seconds, and you learned about it and made the
7 decision to publish -- post on the blog post? Is that what
8 you're saying?

9 **A** No, I'm saying --

10 **MR. SPIRO:** Objection to him testifying as to the
11 timing of everything, assuming those things in evidence.

12 **THE COURT:** You can ask the witness about the timing.

13 **THE WITNESS:** I don't know the exact timing. But
14 the -- the probability of it being leaked to the media was
15 extremely high. That is, when there are 30-, 40,000 people
16 receiving an email, there are -- it is extremely likely to be
17 seen by the media.

18 So I think, if what you're saying is true, that we would
19 have posted it immediately, that would have been the right
20 thing to do to make sure that investors did not have the wrong
21 impression from articles written where they take a specific
22 piece of the email out of context.

23 **BY MR. PORRITT**

24 **Q** So now you're saying it wasn't posted in response to a
25 leak.

MUSK - REDIRECT / PORRITT

1 **A** This is five years ago. I don't know what the exact
2 timing was. But the -- but I think the -- it is actually
3 important in situations like this to avoid having the media
4 write an article where they take something out of context,
5 which is very common. And that could potentially mislead
6 investors.

7 So I think this was an attempt to ensure that the media
8 did not mislead -- could not mislead the investors with an
9 out-of-context quote, which is the right thing to do.

10 **Q** And isn't that why you don't announce major transactions
11 like going private with funding secured at 420 through a tweet?
12 Rather, you do it through a proper corporate disclosure?

13 **A** I said I was considering it.

14 **Q** If you were being transparent with investors, why didn't
15 you draft a proper statement giving the details even along the
16 lines of Exhibit 12, even though that's incomplete about
17 funding, and publish that rather than your tweet?

18 **A** As I testified earlier, I was concerned that some
19 investors would have information about the take-private, but
20 not all. And that would allow them to trade -- potentially
21 trade the stock. And so to ensure that all investors were
22 aware of it, and not just some, I thought it was important to
23 make it clear that a take-private transaction was under
24 consideration.

25 **Q** This blog post we saw took about an hour and a half for

MUSK - REDIRECT / PORRITT

1 your corporate team to draft, correct?

2 **MR. SPIRO:** Objection, same objection, assuming facts
3 not in evidence.

4 **THE COURT:** Well, he can answer that if he knows.

5 **THE WITNESS:** I don't know exactly how long it took.

6 **BY MR. PORRITT**

7 **Q** Well, if we look at Exhibit 8 -- counsel showed this to
8 you.

9 (Document displayed)

10 **Q** If you look at the top, at the time, it was issued at
11 9:48 a.m. Do you see that?

12 **A** Yes.

13 **Q** Okay. Exhibit 13 --

14 **MR. PORRITT:** 13, Derek.

15 (Document displayed)

16 **BY MR. PORRITT**

17 **Q** Issued at 12:36 p.m., and that attaches a link to the blog
18 post, correct?

19 **A** Yes.

20 **Q** All right. So it was published in less than three hours
21 from beginning to end. Correct?

22 **A** That seems to be the case.

23 **Q** Okay. And you're saying that's impossible, that would
24 have been -- you didn't think that you should do that, spend a
25 few hours drafting a statement; instead, you would just tweet

MUSK - REDIRECT / PORRITT

1 out "Am considering taking Tesla private at \$420. Funding
2 secured." You thought that was a better outcome for investors?

3 **A** Yes, I did.

4 **Q** Okay. Now, if we can go to the Yasir text, or your text
5 exchanges with Yasir, August 10th, August 11th, August 12th,
6 Exhibit 121.

7 (Document displayed)

8 **Q** I want to start again on Exhibit 121, Page 8, at the
9 bottom there, the long, long text from Yasir.

10 (Document enlarged)

11 **Q** Do you see that there?

12 **A** Yes.

13 **Q** Okay. And you said, you know, that they didn't -- they
14 hadn't issued any -- they never ask -- Yasir never asked for
15 any additional information after the July 31 meeting before the
16 August 13th blog post.

17 Did you say that?

18 Do you recall that testimony?

19 **MR. SPIRO:** Objection. He's mischaracterizing the
20 testimony. If he has a specific page and line, he should do it
21 that way, not the way he's doing it.

22 **THE COURT:** Sustained.

23 **MR. PORRITT:** All right. I'll do it this way.

24 **BY MR. PORRITT**

25 **Q** In Exhibit 121-8, in this email, you see here Yasir is

MUSK - REDIRECT / PORRITT

1 asking for the teams to start working together. Do you see
2 that?

3 **A** Um, yes.

4 **Q** Okay. And that's going to require an exchange of
5 information. Isn't that true?

6 **A** Well, he would obviously need to know the exact
7 percentage. And that would depend on which investors stayed in
8 the company, going private.

9 **Q** Right. And you didn't know that at that point in time,
10 did you?

11 **A** No.

12 **MR. PORRITT:** And if we can go on to 121-11.

13 (Document displayed)

14 **BY MR. PORRITT**

15 **Q** The middle of the page there. Yasir (As read):

16 "Let's see the numbers and get our people to
17 meet and discuss. We cannot approve
18 something we don't have sufficient
19 information. We've agreed that you will send
20 the financial information and the way going
21 forward within a week and no thing happened
22 since."

23 Do you see that?

24 **A** Yes.

25 **Q** So he is referring to needing to see the information

MUSK - REDIRECT / PORRITT

1 before they can approve anything. Isn't that correct?

2 **A** I mean, in my opinion, he is backpedaling here. That is
3 why I'm upset with him.

4 **Q** He is asking in that text for you to send him information,
5 before they can approve anything. Isn't that right?

6 **A** I -- Tesla's a publicly traded company. It's -- the
7 information is public. But the -- the exact amount that would
8 be needed depends on which investors would stay with Tesla as a
9 private company.

10 **Q** And then on 121-12 --

11 **MR. PORRITT:** Derek? Sorry.

12 (Document displayed)

13 **BY MR. PORRITT**

14 **Q** You testified how the PIF bought 5 percent of Tesla, or up
15 to 5 percent of Tesla, without any agreement and so on. Do you
16 agree with that? Do you recall that testimony?

17 **A** That is correct.

18 **Q** Okay. And the PIF had made numerous -- has made
19 investment -- large investments in numerous companies, isn't
20 that correct?

21 **A** Yes. They're one of the biggest funds in the world.

22 **Q** Okay. But as of July, 2018, or August, 2018, they hadn't
23 yet taken any company private yet. Isn't that correct?

24 **A** That's what the text says.

25 **Q** Okay. And taking the company private is different from

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1 simply buying their shares in the open market. Isn't that
2 correct?

3 **A** It's not significantly different.

4 **Q** Okay. You don't think it's significantly different,
5 taking a company private is not significantly different than
6 just buying the shares in the market?

7 **A** I don't think so.

8 **Q** Okay. Do you have -- does Egon Durban think that, in his
9 business on taking companies private, that's not based on the
10 fact that it's different from simply buying the shares on the
11 market?

12 **MR. SPIRO:** Objection to what Mr. Egon Durban thinks.

13 **THE COURT:** Sustained.

14 **BY MR. PORRITT**

15 **Q** In your experience, do you retain two investment banks to
16 assist you in simply selling shares or buying shares in the
17 market?

18 **A** Yes. We retain investment banks many times in buying
19 shares on the public market. That is normal.

20 **Q** Do you have a special committee involved when they are
21 simply buying shares on the market?

22 **A** No.

23 **Q** All right. And here, finally, Mister -- or Yasir says,
24 you know (As read):

25 "...the agreement as was minuted by my people

MUSK - REDIRECT / PORRITT

1 is to wait forth the information to be sent
2 by you within a week, on how we will move
3 forward..."

4 Do you see that?

5 **A** Yes.

6 **Q** Okay.

7 **MR. PORRITT:** And again, if you could just show
8 Exhibit 80 at this point, Derek.

9 (Document displayed)

10 **BY MR. PORRITT**

11 **Q** And here we have the minutes, as minuted by Yasir's
12 people.

13 **MR. SPIRO:** Well, objection. These aren't what we
14 believe to be real. So that's a characterization from a
15 lawyer.

16 **MR. PORRITT:** You know, objection, Your Honor.

17 **THE COURT:** The -- this exhibit has been admitted, and
18 my decision stands. And counsel can characterize it based on
19 the face of the evidence -- based on that document.

20 Go ahead.

21 **BY MR. PORRITT**

22 **Q** Once again, we talked about on your direct, it's got the
23 seal of the PIF on the top right-hand corner there, doesn't it,
24 Exhibit 80?

25 That's a question for you. It's got the seal of the Saudi

MUSK - REDIRECT / PORRITT

1 PIF on the top right-hand corner, doesn't it?

2 **A** Yes.

3 **Q** And that's the same seal that --

4 **MR. SPIRO:** Objection. Beyond the scope.

5 **THE COURT:** Overruled.

6 **BY MR. PORRITT**

7 **Q** And that's the same seal that was on that NDA letter that
8 you signed with the PIF, correct?

9 **A** Yes.

10 **Q** All right. And then if we can -- if you just turn, just
11 roll down, just the very first, "Agreed actions."

12 "To provide the plan and the financial
13 calculation assumptions to take Tesla
14 Private. (Elon)."

15 Do you see that?

16 **A** Yes. As I said, they would need to know which -- how many
17 investors would be staying with the company and how, how many
18 would be selling and that would change how much funding they
19 would provide. That's obviously only knowable after you talk
20 to all the investors.

21 But they were very clear to me that they would take --
22 they were committed to take Tesla private, whatever it took.
23 There was no -- there were no constraints on it.

24 **Q** Now, you talked about the media hurricane that followed
25 your August 7th tweets. Do you recall that testimony?

MUSK - REDIRECT / PORRITT

1 **A** Yes.

2 **Q** Okay. What were you doing to follow the media attention
3 of the -- following your August 7th tweets?

4 (Document taken off display)

5 **A** It's not possible for me to read all the media articles.
6 There are too many. And I -- my focus was on Tesla and making
7 -- being in the factory and getting the cars built.

8 **Q** Okay. Wasn't much of the media attention directed to your
9 words, "Funding secured"? Isn't that correct?

10 **A** I don't recall.

11 **Q** And I think your testimony is, is that you weren't looking
12 at the Tesla stock price following your August 7th tweets.
13 Isn't that correct?

14 **A** I mean, I occasionally look at the stock price, but it is
15 not, you know, something I look at frequently. So, but
16 occasionally, um, but the vast majority of the time I am simply
17 heads-down in the factory, getting things built.

18 **Q** Now, you testified under examination -- actually at the
19 end of my examination and your counsel, about you said you
20 would be willing to sell your SpaceX shares to fund the
21 going-private for Tesla? Is that correct?

22 **A** It would certainly not be my preference to do so, but it
23 is something that could be done, um, yes.

24 **Q** It's something that you had in the back of your mind, I
25 think is what you said in your prior testimony. Is that

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1 correct?

2 **A** Yes.

3 **Q** Okay. Now, SpaceX shares aren't publicly listed. Is that
4 correct?

5 **A** SpaceX is a private company. And as I articulated in my
6 email to the board, I thought it was possible to operate SpaceX
7 much more effectively without the distraction of the public
8 markets and Wall Street speculators. So what I had in mind was
9 structure for Tesla similar to that of SpaceX, as I said in my
10 email to the board.

11 **Q** Although the SpaceX structure would be different if you
12 sold all your SpaceX shares to fund the going private of Tesla,
13 correct?

14 **MR. SPIRO:** Objection to what would have happened if
15 this would have been more than a consideration, and what would
16 then happen to SpaceX's corporate structure. Relevance.

17 **THE COURT:** I'm not sure I understand the question.

18 **MR. PORRITT:** Well, he's testified he would use SpaceX
19 shares to fund his going private, but the whole purpose of
20 going private with Tesla is to make a private Tesla resemble
21 SpaceX, which he is changing in order to take Tesla private.

22 I'm just trying to elaborate as to how he thought selling
23 SpaceX shares would work with a going-private transaction with
24 Tesla.

25 **THE WITNESS:** No, SpaceX --

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1 **MR. SPIRO:** My objection remains, Your Honor. I don't
2 understand --

3 **THE COURT:** All right. As last phrased, the objection
4 is overruled.

5 **THE WITNESS:** Um, SpaceX is the backbone of the
6 American space industry. It's a very valuable company. It's
7 the most valuable private company in the country. And I am
8 majority shareholder of the company. So that would enable me
9 to sell a large portion of SpaceX in order to fund the Tesla
10 take-private.

11 And that is exactly what I did with the Twitter
12 take-private, was that I sold Tesla shares to take Twitter
13 private. I would have done the same thing with SpaceX. I
14 would have sold SpaceX shares to help take Tesla private.

15 And so I just did a take-private transaction where I did
16 exactly that, which is sold shares in Tesla -- and I didn't --
17 you know, I would have preferred to sell fewer shares in Tesla,
18 but it was -- but nonetheless, that's what I did. Meaning, I
19 -- I followed through with the Twitter take-private and sold
20 shares in a company that I love, to ensure that the transaction
21 went through.

22 **BY MR. PORRITT**

23 **Q** And you publicly disclosed that's what you would do to
24 fund your purchase of Twitter, isn't that correct?

25 **A** I -- that -- that -- there was a public disclosure at one

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1 point, yes.

2 **Q** And you never disclosed your intent to sell SpaceX to fund
3 your acquisition of Tesla shares in August of 2018, isn't that
4 correct?

5 **A** I don't -- I don't recall. But I -- it is certainly
6 common knowledge that I have really two major assets, which is
7 my SpaceX ownership and Tesla ownership.

8 And just as I used Tesla stock for the Twitter
9 take-private, I would have used SpaceX stock for the Tesla
10 take-private. And, and like I said, that alone, SpaceX stock,
11 alone, meaning funding is secured.

12 **Q** Um --

13 **A** That's a really important point.

14 **Q** Now, SpaceX shares -- we'll come to that in a minute.
15 SpaceX shares, as a private, they're harder to sell than public
16 shares? Is that correct?

17 (Reporter clarification)

18 **MR. PORRITT:** Sorry.

19 **BY MR. PORRITT**

20 **Q** If SpaceX shares are private, then they are more difficult
21 to sell than public shares, isn't that correct?

22 **A** Not in the case of SpaceX. The demand for SpaceX stock
23 far exceeds the supply.

24 **Q** Okay. And your SpaceX shares -- well, first of all, how
25 much was SpaceX worth in July, 2018?

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1 **A** Well, um, I think probably we could have gotten -- I don't
2 know, 30 billion-plus, for that.

3 **Q** So it was worth less than Tesla at the time.

4 **A** Yes, but my ownership of SpaceX was much higher, a much
5 higher percentage than my ownership of Tesla. So I believe I
6 owned, I don't know, 60 percent, perhaps. I think on the order
7 of, you know, 15 to \$20 billion, is what I think it would have
8 been worth.

9 **Q** Fifteen to \$20 billion?

10 **A** Yes.

11 **Q** Okay. And those shares are pledged as security for your
12 personal loan, isn't that correct?

13 **A** For, for Tesla loans, you mean? No, very little of it is
14 pledged.

15 **Q** So SpaceX shares aren't pledged for your personal loans?

16 **MR. SPIRO:** Objection, to when.

17 **THE COURT:** During 2018, I assume you are talking
18 about.

19 **MR. PORRITT:** Yes.

20 **MR. SPIRO:** At any point in 2018, is that the
21 question?

22 **BY MR. PORRITT**

23 **Q** In July of 2018, were your SpaceX shares pledged as
24 security for your personal loans?

25 **A** I don't recall, but if so, it would have been a very small

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1 amount.

2 **Q** Okay. What's a small amount for you, when you're talking
3 15 to \$20 billion?

4 **A** I don't recall. It was not a significant number.

5 **Q** Okay. And if you sold SpaceX shares to fund the
6 going-private, that means that you personally, Elon Musk, would
7 acquire more Tesla shares. Isn't that correct?

8 **A** In that scenario, yes.

9 **Q** Okay. And that results in you substantially increasing
10 your percentage ownership in Tesla, isn't that correct?

11 **A** Yes, yes.

12 **Q** Right. If we can go back to Exhibit 12, third paragraph
13 from the bottom.

14 (Document displayed)

15 **BY MR. PORRITT**

16 **Q** Expressly says you don't envision substantially changing
17 your percentage ownership of Tesla as part of the go-private,
18 isn't that correct?

19 **A** That's correct, because I was confident that the Saudi PIF
20 and other investors would participate in the take-private.

21 You know, in a worst-case situation, however, I had SpaceX
22 stock to secure the funding. It would not be my preference to
23 sell SpaceX stock, but it's certainly obviously something that
24 I could have done.

25 **Q** Right, again, it's in the back of your mind. Isn't that a

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1 fair statement?

2 **A** I specifically mentioned it in the SEC testimony.

3 **Q** I think you said in the SEC testimony it was in the back
4 of your mind, isn't that correct?

5 **A** Yeah. It's in the back of my mind. It's not something
6 that I ideally would like to do, but it's something that I
7 could do. You know, just sort of if you have a house, and
8 you -- you can pledge the house for a transaction but it's not
9 necessarily something you want to do.

10 Or you could sell a house, but you don't necessarily want
11 to sell the house, but it's still a thing you could do. You
12 know, if you own a house, you can say: Okay, I'm going to buy
13 this other thing. And worst-case scenario, I could sell the
14 house to do so. It's not that you want to sell the house.

15 I really didn't want to sell SpaceX stock, but I could
16 have done so.

17 **MR. PORRITT:** Your Honor, I would like to refer the
18 witness to his interrogatory answers served on us in this case.
19 Dated April -- he signed them on April 14, 2021.

20 **THE COURT:** Do you have a copy?

21 **MR. PORRITT:** Yes, I do, Your Honor.

22 **MR. SPIRO:** I need a copy as well. And this is all
23 outside the scope.

24 **MR. PORRITT:** I'm going to refer the witness to
25 Interrogatory No. 2 and his response.

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1 **THE COURT:** Wait a minute. What page is that on?

2 **MR. PORRITT:** It is Page 13.

3 **MR. SPIRO:** Your Honor, this is improper. Could we
4 approach?

5 **THE COURT:** Well, let me read it first.

6 **MR. SPIRO:** Sure.

7 (The Court examines document)

8 **THE COURT:** All right, so what are you requesting,
9 Mr. Spiro?

10 **MR. SPIRO:** Your Honor, can we approach on the
11 subject, just --

12 **THE COURT:** Okay.

13 (The following proceedings were heard at sidebar)

14 **MR. SPIRO:** First, they objected to the terms of what
15 "funding" means, and this was not meant to mean internal
16 funding, his own funding. It was meant to mean external
17 funding sources. So this question is totally misleading, the
18 way he's doing it. Meaning only if he clarifies that "funding"
19 was defined at the time as external funding, so his own
20 personal wealth.

21 Second --

22 **THE COURT:** You're saying there was an objection
23 stated then?

24 **MR. SPIRO:** Correct. Yeah. And then number two is
25 there's a supplement to this in which -- and that's what my

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1 client was -- my client, excuse me, strike that -- that's what
2 my colleague was -- was just pointing out, which is that this
3 was immediately supplemented and includes -- and when they met
4 and conferred about funding then they added his personal
5 funding, and it specifically includes SpaceX. In the exact
6 same 'rog response.

7 **MR. PORRITT:** Your Honor, it wasn't immediately. It
8 was purportedly supplemented months later, and that supplement
9 was never signed by Mr. Musk, and we never received a
10 verification. So that is a non-answer.

11 **MR. SPIRO:** That's not my --

12 **THE COURT:** You can bring it up on redirect. If you
13 want to admit something as a --

14 **MR. SPIRO:** Well, then, I would need -- again, this
15 wasn't gone into, nor did I go into his SpaceX at all during my
16 examination. This is all outside the scope, and it's all
17 improper. Didn't go into SpaceX at all in his examination,
18 Your Honor.

19 So now we have something that's one, outside the scope,
20 and two, we're being sandbagged with it because again, it's
21 completely misleading. He's not talking about his own personal
22 wealth. This is external funding.

23 **THE COURT:** You can bring that out on cross.
24 Objection overruled.

25 (Conclusion of sidebar discussion; the following

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1 proceedings were held in the presence and hearing of the Jury:)

2 **THE COURT:** The objection is overruled. You may
3 proceed, Mr. Porritt.

4 **MR. PORRITT:** Thank you, Your Honor.

5 **BY MR. PORRITT**

6 **Q** You recall, Mr. Musk, that we, the plaintiffs, served you
7 with written questions during the course of discovery in this
8 case. Do you recall that?

9 **A** I don't recall all -- everything about what was requested.

10 **Q** Okay. But you have in front of you responses to written
11 questions, isn't that correct?

12 **A** Um, that seems to be the case.

13 **MR. SPIRO:** Well, objection. We would ask that the
14 witness have the updated version, and --

15 **MR. PORRITT:** Your Honor. The objection is --

16 **MR. SPIRO:** -- not just one of the 'rog responses.
17 That's not fair.

18 **THE COURT:** No, you can bring that out on cross. And
19 if there's a signed supplemental response, you can bring that
20 in. But at this point, we're dealing with one at a time.

21 Go on.

22 **MR. PORRITT:** Thank you, Your Honor.

23 **BY MR. PORRITT**

24 **Q** And to these written questions you provided written
25 answers, isn't that correct?

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1 You have that in front of you?

2 A I have a document in front of me.

3 Q Okay. And if you turn to the last page of the document
4 you have in front of you, titled "Verification," do you see
5 that?

6 A You mean this, this -- the page with the -- oh, yes, you
7 mean -- which page do you mean?

8 Q The very last page.

9 A Oh.

10 Q Do you see that?

11 A Yes.

12 Q And that has your signature on it?

13 A Yes.

14 Q Okay. And you say:

15 "I declare under penalty of perjury that the
16 foregoing is true and correct."

17 Do you see that?

18 A Yes.

19 Q Okay. And that's the same oath you have taken here, is to
20 testify truthfully, isn't that correct?

21 A That's correct.

22 Q Okay. So if I can direct you to Interrogatory No. 2 on
23 Page 13.

24 (Witness examines document)

25 Q Do you have that?

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1 **A** Yeah.

2 **Q** Okay. Interrogatory No. 2, this is a question we asked
3 you in writing:

4 "Identify all funding that was secured as of
5 12:48 p.m. Eastern time on August 7, 2018, to
6 take Tesla private at 420 per share."

7 Do you see that question?

8 **A** Yes.

9 **Q** And you respond, your response begins at the bottom of
10 that page, Line 25 -- I've got a bit of reading to do, members
11 of the jury so bear with me (As read):

12 "At the July 31, 2018 meeting at Tesla's
13 Fremont factory, attended by Yasir
14 Al-Rumayyan, Saad Al-Jarboa and Naif
15 Al-Mogren from the Public Investment Fund of
16 Saudi Arabia (PIF) and Mr. Musk, Sam
17 Teller..."

18 **MR. SPIRO:** Is this document in evidence that he is
19 just reading from?

20 **MR. PORRITT:** "...and Deepak Ahuja from Tesla..."

21 **THE COURT:** Hold on. Are you --

22 **MR. PORRITT:** I mean, I can move this into evidence if
23 you would like.

24 **THE COURT:** Hold on, hold on. One at a time.

25 **MR. PORRITT:** Sorry.

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1 **THE COURT:** Are you objecting to his reading it?

2 **MR. SPIRO:** Are we going to read the supplement to
3 this?

4 **MR. PORRITT:** Your Honor.

5 **THE COURT:** No. I've already answered that. So the
6 question is: Are you asking him to admit this into evidence?
7 Or are you going to allow him to read it?

8 **MR. SPIRO:** He can read it, Your Honor.

9 **THE COURT:** He can read it? I think it's also fair to
10 say that the -- there were some objections stated at the outset
11 of the answer. And, among other things, Mr. Musk objected to
12 the word "secured" as being undefined and susceptible to
13 multiple varied interpretations.

14 So I think for context you should read the entirety.

15 **MR. PORRITT:** Apologies. So I'm going to read the
16 objections as well? Or --

17 **THE COURT:** I think you should.

18 **MR. PORRITT:** All right, I will do that.

19 **BY MR. PORRITT**

20 **Q** Question was (As read):

21 "Identify all funding that was secured as of
22 12:48 p.m. Eastern, on August 7th, 2018, to
23 take Tesla private at 420 per share."

24 Your response:

25 "In addition to the foregoing general

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1 objections and objection to instructions,
2 which are incorporated -- and definitions
3 which are incorporated by reference herein,
4 Mr. Musk objects to this interrogatory on the
5 grounds it is premature contention
6 interrogatory. Mr. Musk also objects to this
7 interrogatory to the extent that it seeks
8 information protected from discovery by any
9 right to privacy or any other applicable
10 privilege or protection, including the right
11 to privacy of third parties. By Mr. Musk's
12 obligation under applicable law or contract
13 to protect such confidential information,
14 including as set forth in confidentiality
15 and/or non-disclosure agreements or
16 understanding with third parties. Mr. Musk
17 will provide such information, if any, only
18 in accordance with the protective order.
19 "Mr. Musk also objects that the word
20 'secured' is undefined and susceptible to
21 multiple varied interpretations. Mr. Musk
22 further objects to this interrogatory to the
23 extent that it seeks information protected by
24 the attorney-client privilege, work product
25 doctrine, common interest privilege, or

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1 common law privilege, doctrine, immunity,
2 rule of confidentiality, or protection from
3 disclosure that may attach the information
4 requested."

5 "Subject to and without waiving the foregoing
6 objections, Mr. Musk responds as follows:

7 "At the July 31, 2018 meeting at Tesla's
8 Fremont factory attended by Yasir
9 Al-Rumayyan, Saad Al-Jarboa and Naif
10 Al-Mogren from the PIF of Saudi Arabia (PIF)
11 and Mr. Musk, Sam Teller and Deepak Ahuja
12 from Tesla, Mr. Musk received an oral
13 commitment from Mr. Al-Rumayyan to fund the
14 contemplated going-private transaction, as
15 Mr. Musk and multiple other parties (sic)
16 confirmed in their testimony to the SEC."

17 Reference to transcripts.

18 "Mr. Musk further responds that, as Mr. Musk
19 explained in his blog post 'Update on Taking
20 Tesla Private' published on Tesla's website
21 an August 13, 2018:

22 "'Going back almost two years, the Saudi
23 Arabian sovereign wealth fund has approached
24 me multiple times about taking Tesla
25 private.... Recently, after the Saudi fund

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1 bought almost 5 percent of Tesla's stock
2 through the public markets, they reached out
3 to ask for another meeting. The meeting took
4 place on July 31st. During the meeting, the
5 Managing Director of the fund expressed
6 regret that I had not moved forward
7 previously on a going private transaction
8 with them, and he strongly expressed his
9 support for funding a going private
10 transaction for Tesla at this time. I
11 understood from him that no other decision
12 makers were needed and that they were eager
13 to proceed. I left the July 31st meeting
14 with no question that a deal with the Saudi
15 sovereign fund could be closed, and that it
16 was just a matter of getting the process
17 moving. That is why I referred to 'funding
18 secured' in the August 7th announcement.'"

19 Then you refer to the blog post here. And you conclude
20 your answer:

21 "Discovery is ongoing and Mr. Musk reserves
22 the right to supplement or amend this
23 response should he learn any additional
24 information responsive to the interrogatory."

25 **A** Right.

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1 **Q** And that's -- if I may ask a question.

2 **A** Sure.

3 **Q** You reviewed that answer, right, before you signed this as
4 true, under penalty of perjury?

5 **A** Um, yes.

6 **Q** Okay. You could have made any changes you wanted to this
7 response, isn't that correct?

8 **A** Well, actually, at the bottom of the response it says that
9 I reserve the right to supplement or amend it.

10 **Q** Okay. But at the time, in April, 2021, this statement was
11 correct. Isn't that true?

12 **A** Um, no, the SpaceX stock was available --

13 **Q** Excuse me. My question was as of April, 2021, you signed
14 that this statement, this response to Interrogatory No. 2 was
15 true, didn't you?

16 **A** Yes. And it also said --

17 **Q** Okay. And you reviewed it beforehand, right?

18 **A** Yes, and --

19 **Q** Okay. So you didn't mention anything about SpaceX in
20 April, 2021, in response to "What funding was secured on
21 April 7, 2018," did you? Under oath.

22 **A** Not in this, but --

23 **Q** All right. Thank you.

24 **THE COURT:** He can explain. Now that you've raised
25 it, he can explain. The answer is no, he did not mention it.

MUSK - REDIRECT / PORRITT

1 Go on, Mr. Musk.

2 **THE WITNESS:** Thank you, Your Honor.

3 I think it's very important to note that this answer
4 reserves the right to supplement. It specifically says in the
5 answer that there is the right to supplement it.

6 And, moreover, Mr. Porritt is well aware that I mentioned
7 the SpaceX funding in the SEC testimony at -- which was much
8 closer in time to --

9 **THE COURT:** Okay. We're not -- I'm going to stop
10 that.

11 **THE WITNESS:** Sure.

12 **THE COURT:** We're not going to go there.

13 **BY MR. PORRITT**

14 **Q** And you reserved the right to supplement, should you learn
15 any additional information responsive to this interrogatory.
16 Correct?

17 **A** Yes.

18 **Q** Did you learn any additional information about your
19 thoughts about SpaceX in 2018, between -- following April,
20 2021?

21 **A** Well, I mentioned in the SEC testimony that --

22 **Q** That was in 2018. Did you learn anything after April,
23 2021, about your thinking about using SpaceX to fund your
24 investment in Tesla in 2018?

25 **MR. SPIRO:** Objection. It mischaracterizes it. He's

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1 not being asked in this interrogatory about his own net worth.

2 **MR. PORRITT:** Oh, Your Honor.

3 **THE COURT:** Overruled. Objection is overruled.

4 So the question is, the interrogatory states that you
5 reserve the right to supplement or amend this response, should
6 you learn any additional information responsive to this
7 interrogatory, which was filled out in 2021. I think the
8 question pending is: Did you learn any additional information
9 after filling out this interrogatory?

10 **THE WITNESS:** I -- I would have to say that -- well, I
11 -- I should have mentioned SpaceX here. I did mention it in
12 the SEC testimony. But it was an error on my part in not
13 mentioning it here. So I should have mentioned it here.

14 **BY MR. PORRITT**

15 **Q** You took longer over this interrogatory response than over
16 your August 7th tweet, isn't that correct?

17 **A** I don't know how much time I spent on this.

18 **Q** Okay. Now, you testified in response to questioning from
19 Mr. Spiro that you have never lost money for investors. Isn't
20 that correct?

21 **A** Um --

22 **MR. SPIRO:** Objection. Again, if he does this, he
23 shouldn't make characterizations. If he's going to say prior
24 testimony, he should say "Question," "Answer," and ask --

25 **THE COURT:** Overruled.

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1 **THE WITNESS:** Every time I have raised money, it has
2 been at a higher price. Yeah. So investors have done
3 extremely well. That is why it is -- it is relatively easy for
4 me to get investor support, because my track record is
5 extremely good.

6 **BY MR. PORRITT**

7 **Q** Okay. You don't recall testifying that you've never lost
8 money for investors?

9 **A** To the best of my recollection, all of the financing
10 rounds have been up rounds. That's what's meant by that.

11 **Q** Would you agree with the statement that you have never
12 lost money for investors?

13 **A** The -- every financing round that I can recall -- and
14 there have been possibly a hundred -- has been at a higher
15 valuation, unless I'm -- unless I'm perhaps misremembering one
16 or two.

17 But it is -- it would be accurate to say that I probably
18 have the best track record with investors, certainly one of the
19 best track records with investors of anyone in the world.

20 **Q** My question was: Would you agree with the statement that
21 you have never lost money for investors?

22 **A** I'm not sure what you mean by that.

23 **Q** Would you agree that investors like Glen Littleton -- who
24 believed in you and Tesla, who had been a long-term, long
25 investor in Tesla, and yet lost millions as a result of these

MUSK - REDIRECT / PORRITT

1 August 7th tweets. Would you say you lost them money? Or him
2 money?

3 **MR. SPIRO:** Objection.

4 **THE COURT:** If he understands the question, he can
5 answer.

6 **THE WITNESS:** Um, no. I don't think so.

7 **BY MR. PORRITT**

8 **Q** Okay. Would you say that Tim Fries who bought Tesla stock
9 on August 8, 2018, after your August 7th tweets because he was
10 believing in the truth of your tweet about "Funding secured,"
11 and then lost money when the stock price declined after
12 disclosures that there was no funding, would you say you lost
13 him money?

14 **A** Your question contains falsehoods.

15 **Q** So you don't agree that you lost him money.

16 **A** I don't agree that I lost him money, no.

17 **Q** Okay. What about the thousands of other investors who
18 relied on and believed in your tweets, as you intended them to
19 do, and lost millions of dollars as a result? You don't think
20 you lost them any money?

21 **A** Um --

22 **MR. SPIRO:** Objection to this question, also.

23 **THE COURT:** Sustained.

24 **BY MR. PORRITT**

25 **Q** Have you never felt any regret for the harm your tweets

MUSK - REDIRECT / PORRITT

1 caused investors like Glen Littleton and Tim Fries when the
2 market chaos followed?

3 **A** The reality is that Tesla investors are extremely happy.
4 And the reality is, in my opinion, you don't represent them.

5 **MR. PORRITT:** Your Honor, I'll move to strike that
6 last answer.

7 **MR. SPIRO:** We --

8 **THE COURT:** That last answer is stricken, and the
9 witness is directed to answer the question.

10 **MR. SPIRO:** Okay, that's over the defense's objection.
11 He asked for a question. It was a fair response.

12 **THE COURT:** My statement that his response is stricken
13 stands.

14 So ask the question, again, Mr. Porritt, and the witness
15 will answer it.

16 **BY MR. PORRITT**

17 **Q** Have you ever felt any regret for any harm that your
18 tweets may have caused for investors like Glen Littleton and
19 Tim Fries?

20 **A** My communications have been, to the best of my ability,
21 truthful and accurate. And the reality is that Tesla today is
22 worth ten times more --

23 **MR. PORRITT:** Objection -- Your Honor, there's a
24 motion on this. And an order on this.

25 **MR. SPIRO:** Judge, he opened the door to it.

MUSK - REDIRECT / PORRITT

1 **THE COURT:** No.

2 **MR. SPIRO:** He's allowed to answer that question.

3 **THE COURT:** No. The jury's going to disregard that
4 last comment.

5 And the question was -- repeat the question again, and I'm
6 going to ask the witness to answer. I'll let him explain, but
7 phrase your question precisely, and I'm going to listen to what
8 the witness needs to answer.

9 **BY MR. PORRITT**

10 **Q** All right. So, my question was: Have you ever felt any
11 regret for any harm your tweets may have caused investors like
12 Glen Littleton and Tim Fries?

13 **THE COURT:** So the answer is yes or no; then you can
14 explain.

15 **THE WITNESS:** I certainly never want an investor to
16 lose money. And I would -- it's -- if he did lose money on the
17 basis of that tweet, then obviously I would be sad about that.
18 But investors in the public market buy and sell stock all the
19 time. On balance, they have done extremely well.

20 **BY MR. PORRITT**

21 **Q** And you said you ultimately stopped going ahead with this
22 transaction because of feedback from small investors? Is that
23 correct?

24 **A** Yes.

25 **Q** Okay.

MUSK - REDIRECT / PORRITT

1 **A** From investors, yeah.

2 **Q** I'm sorry?

3 **A** Yes, investor -- after soliciting the investor feedback, I
4 listened to the investors. They wished, on balance, to remain
5 public, and so we did.

6 **Q** Okay. And who were these small investors that you were
7 talking to?

8 **A** Well, I would say one of the most influential things I
9 received was from Cathie Wood of Arc Invest, on Twitter. And
10 she specifically asked if Tesla could remain public, because
11 her fund in her case could not participate in Tesla as a
12 private company, and she felt that the future would be very
13 bright for Tesla. And she was correct. Tesla ended up being
14 ten times worth --

15 **MR. PORRITT:** Your Honor, at this point --

16 **THE COURT:** Sustained.

17 **MR. PORRITT:** Please.

18 **THE COURT:** That comment, last comment is to be
19 disregarded.

20 **MR. PORRITT:** And Your Honor, if we could -- I mean,
21 the witness appears to have been spring-loaded to introduce a
22 particular speaking point.

23 **THE COURT:** Well, I'm going to direct the witness.

24 **MR. SPIRO:** Your Honor, he has been testifying for
25 three days.

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1 **THE COURT:** I understand that. And so I'm not
2 commenting on your last comment, Mr. Porritt, but the witness
3 is directed to stay with the question.

4 **MR. PORRITT:** All right.

5 **BY MR. PORRITT**

6 **Q** So Arc Investment is a multi-million dollar investment
7 fund, is that correct?

8 **A** Yes.

9 **Q** So that is your definition of a small investor, is a
10 multi-million dollar investment fund?

11 **A** Well, they -- they have many small investors that invest
12 in them. And they represent many small investors.

13 **Q** Okay. So when you talked about small investors not
14 wanting to -- the feedback from retail -- small investors, you
15 weren't talk about retail investors like Tim Fries..

16 **A** I'm not sure what you're referring to here.

17 **Q** When you talked about getting feedback from small
18 investors, you're not talking about small retail investors like
19 Tim Fries, who invested \$20,000 in Tesla.

20 **A** I'm talking about all investors.

21 **Q** Well, you said you got feedback from small investors, and
22 that was small investors like Cathie Wood who runs a
23 multi-million dollar investment fund.

24 **A** She represents many small investors.

25 **Q** Okay.

MUSK - RECROSS / SPIRO

1 **A** Uh --

2 **Q** But you didn't get any feedback directly from small retail
3 investors like Tim Fries, correct?

4 **A** I mean, I got quite a lot of feedback on Twitter, from
5 many different sources. So I'm not sure what you're getting
6 at.

7 **Q** Okay. Because the small investors were busy losing money
8 during the course of -- from August 8 to August 23, isn't that
9 correct?

10 **MR. SPIRO:** Objection.

11 **THE WITNESS:** No, I think that's not correct.

12 **THE COURT:** Hold on. Sustained. Sustained.

13 **MR. PORRITT:** All right. Nothing further, Your Honor.

14 **THE COURT:** All right. Thank you.

15 Redirect? Recross?

16 **MR. SPIRO:** Yes, just very briefly, Your Honor.

17 **RECROSS-EXAMINATION**

18 **BY MR. SPIRO**

19 **Q** You were saying that, Mr. Musk, that you talked to small
20 investors on Twitter.

21 **A** Yes.

22 **Q** Do you do that every single day, pretty much?

23 **A** Not every day. But I mean, if you just review my Twitter
24 feed, I talk to investors, small and large, on Twitter
25 frequently.

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1 And then on Tesla earnings calls, we specifically invite
2 small investors to ask questions, and that's quite unique.
3 It's rare for small investors to get to say anything.

4 And we also allow small investors to vote questions, so
5 they can vote to what questions to ask. In fact, there's a
6 Tesla earnings call tomorrow where that will happen.

7 **Q** And you were asked questions about if a small investor
8 bought Tesla stock during that two-week period that you were
9 considering taking it private, and you were asked --

10 **A** Sorry, you might want to go -- closer to the mic?

11 **Q** Yeah. You were asked the questions that suggested that if
12 you bought stock during that two-week period, and you were a
13 small investor, while you were considering going private, that
14 you would have lost money.

15 Is that actually true? Or if you had held your stock,
16 would you not have lost money?

17 **A** Um --

18 **MR. PORRITT:** Object, Your Honor, in terms of the
19 order. We're dealing with -- the time period here is the class
20 period and the time immediately afterwards.

21 **MR. SPIRO:** He just opened -- he just --

22 **THE COURT:** Overruled.

23 **MR. SPIRO:** Thank you.

24 **BY MR. SPIRO**

25 **Q** So Your Honor -- I mean -- Your Honor. Thank you,

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1 Your Honor.

2 Mr. Musk.

3 **A** Yeah.

4 **Q** The question was, plaintiff's counsel --

5 **A** Yeah.

6 **Q** -- asked many questions about if you were a small investor
7 over that two-week period while you were considering taking
8 Tesla private, and suggested you would have lost money.

9 If you were -- if you held your stock, would you have lost
10 money?

11 **A** No. It would have been possibly the best investment on
12 the entire stock market. And -- that they -- I think -- they
13 would have literally gone up 1,000 percent. Anyone who bought
14 stock in that period and held it would have earned ten times
15 their money.

16 **Q** And of course, every day in the stock market with a big
17 company like Tesla, somebody buys and somebody sells.

18 **A** Yes.

19 **Q** Okay. So you were also asked about interrogatory
20 responses that were given at different times. And I jumped up
21 and objected.

22 Did this interrogatory response that asks: What funding
23 did you have secured on August the 7th -- and plaintiff's
24 counsel, as the judge instructed him, brought out the fact that
25 the definition of "secured" is -- is -- you know, there was

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1 lawyerly objections to it. Right?

2 You didn't write this document?

3 **A** It was written by lawyers.

4 Sorry. Sometimes if you go away from the mic, I can't
5 hear you.

6 **Q** Sorry. You seem so close, so --

7 **A** I know. Unfortunately there's a blocking thing. So -- I
8 feel like I'm in a sound booth, yeah.

9 **Q** I apologize.

10 Mr. Musk, do you know, when the lawyers were meeting with
11 each other, whether or not the definition of what funding was
12 secured included your own personal net worth when you were --
13 when that document was completed?

14 **MR. PORRITT:** Objection, Your Honor. That's leading.
15 Lacks foundation.

16 **THE COURT:** Sustained.

17 **BY MR. SPIRO**

18 **Q** Do you know whether or not that includes your own personal
19 net worth?

20 **MR. PORRITT:** Objection, Your Honor. Same objection.

21 **THE COURT:** Sustained. You can ask him as to his
22 understanding.

23 **BY MR. SPIRO**

24 **Q** Was it your understanding that this answer to this
25 question about what funding had been secured included

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1 everything that you -- all monies, interests, homes that you,
2 yourself, had?

3 **MR. PORRITT:** Objection, leading.

4 **THE COURT:** Overruled.

5 **THE WITNESS:** No. I thought they were just talking
6 about outside investors. Not including me.

7 **Q** Right. And these answers don't include -- you don't list
8 house, car --

9 **A** Right.

10 **Q** Okay. And there was no, like, law or rule that you
11 couldn't have used your own capital also as the buyer and the
12 bidder in this context, that you're aware of?

13 **A** Correct.

14 **Q** Okay. And you also said, in response to plaintiff's
15 questions, that in the testimony you gave immediately following
16 the events in question, and as the jury heard read in to the
17 record, you multiple times, multiple times, said that you were
18 also thinking in your mind if you needed to, you would use
19 SpaceX. Is that fair?

20 **A** Yes.

21 **Q** Okay. I'm almost done, Mr. Musk, and you've been on the
22 stand a long time. You were asked a bunch of other questions,
23 hypotheticals, by plaintiff's counsel.

24 During that two weeks, okay, did you actually finalize the
25 take-private? Or was it always a consideration?

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1 **A** It was always a consideration.

2 **Q** Okay. So when you were asked questions about: Well, did
3 you ever announce, you know, X or Y, at that time, during that
4 two weeks, it was still always a consideration.

5 **A** Always a consideration.

6 **Q** Okay. And you said at one point that it wasn't possible,
7 as of the meeting of July 31st, to discuss specific numbers.

8 Can you just explain the third and final time for the jury
9 why that question, when everybody was going back and forth,
10 that there was a commitment but not a specific number, can you
11 just explain why at that time it wasn't possible to know a
12 specific number?

13 **A** Because we needed to talk to all the investors to find out
14 which ones wanted to be part of Tesla as a private company,
15 versus stay as a public company. That is unknowable until you
16 talk to the investors.

17 But what really matters there is that the Saudi PIF, my
18 understanding was they were committed to take Tesla private, no
19 matter what.

20 **Q** And when you say "no matter what," you mean the whole
21 thing.

22 **A** Yes.

23 **Q** Now I'm just going to put up again Exhibit 1001. And do
24 you remember the question: Well, you know, but did Ron Baron
25 commit a specific number?

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1 Do you remember that question?

2 And other investors, a specific number?

3 (Document displayed)

4 **A** Yes.

5 **Q** Okay.

6 **MR. SPIRO:** Can we blow up the top?

7 (Document enlarged)

8 **MR. SPIRO:** Not that much of the top. The top half, I
9 was going to say. I apologize. The top half of --

10 (Document displayed)

11 **MR. SPIRO:** Thanks.

12 **BY MR. SPIRO**

13 **Q** So this is Ron Baron on August 7th, saying:

14 "This would be a terrible result for us..."

15 Again, to be bought out at 420.

16 "...unless we were included in the buying
17 group, of course."

18 Right?

19 **A** Yes. Seems that Mr. Porritt forgot to include that part.

20 **Q** Okay. And when he says that it would be a "terrible
21 result for us at 420," what do you interpret him to mean?

22 **A** Meaning that he thought the company was worth a lot more,
23 and as he makes it clear, that he would want to be a part of
24 Tesla in the take-private. That, that's what he means. He
25 wants to be in the buying group to take Tesla private.

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1 **Q** And when he says "unless we are included in the buying
2 group," as of August 7th, do you think Mr. Baron was worried
3 that there already might be not enough space?

4 **A** Yes.

5 **Q** And if you go up to the email at the top, right, he says:

6 "I hope you will allow us to continue to be
7 an investor in your newly formed business."

8 **A** Yes.

9 **Q** Okay. He remains optimistic and wants to continue to
10 invest with you. Right?

11 And then I asked you, if you recall, did Ron Baron also
12 announce to the world on August 7th, to the world, that he
13 intended to roll his shares?

14 **A** Yes.

15 **Q** Okay. And --

16 **A** I should say that that counts for a lot because he is one
17 of the most respected investors in the world.

18 **Q** Right. And do you remember how much -- how much the
19 shares that Ron Baron was willing to roll and announced he was
20 rolling were worth at the time?

21 **A** I don't recall offhand.

22 **MR. SPIRO:** If we can show the witness 1031, and see
23 if that refreshes your recollection.

24 (Document displayed)

25 **THE WITNESS:** Yeah. So he was a really very

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1 significant shareholder.

2 **MR. PORRITT:** Objection, Your Honor. He hasn't
3 refreshed his recollection.

4 **BY MR. SPIRO**

5 **Q** Well, I'm asking you, were you aware, Mr. Musk, as the CEO
6 of the company, which investors were larger than others?

7 **A** Approximately.

8 **Q** Right. And so do you recall, approximately, was your
9 memory refreshed by looking at Mr. Baron's public announcement,
10 as to approximately how many shares he said that he would roll?

11 **A** Well, he's saying that, by his email, that he would
12 roll --

13 **THE COURT:** Wait a minute. He's now testifying on the
14 basis of the email.

15 **MR. SPIRO:** Well, on the -- he's is saying "email," I
16 heard "email." I don't think he -- I don't think he's
17 referring to the article.

18 **THE WITNESS:** I'm referring to the email. In the
19 email, Mr. Baron says that he wishes to be part of the buying
20 group. And wishes to include his shares.

21 **BY MR. SPIRO**

22 **Q** Right. And so when he says that, do you, do you interpret
23 his statement to mean all of his shares?

24 **A** And possibly more.

25 **Q** Okay. And do you remember approximately the value of

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1 Mr. Baron's holdings, as of August 7th?

2 **A** Half a billion dollars.

3 **Q** Okay. And did he announce to the world on August 7th that
4 he intended to roll -- include -- his half a billion dollars?

5 **A** Yes, he did.

6 **Q** Okay. Now, finally, last exhibit. 332.

7 (Document displayed)

8 **Q** And there was a lot of talk about what was going on with
9 the PIF, you know, in the week following the "Am considering"
10 tweet.

11 If we go to the last paragraph of this article that's in
12 evidence.

13 (Document displayed)

14 **Q** It says (As read):

15 "The Saudi government is planning to turn the
16 PIF into a 2 trillion-dollar powerhouse, to
17 help diversify the Kingdom's oil-dependent
18 economy. In a tweet on Sunday, the nation's
19 energy department said Saudi Arabia currently
20 is working to develop a city to support the
21 supply of raw materials and parts for the
22 automobile industry."

23 Did I read that right?

24 **A** That is correct.

25 **Q** Well, was \$2 trillion enough to take Tesla private, twenty

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1 times over?

2 **A** Um, 2 trillion would have been enough to take Tesla
3 private 150 times over.

4 **Q** You're better at math than me, Elon. If we could go to
5 the front --

6 **A** Less than 1 percent. We're talking about on an order of
7 1 percent, maybe 1-1/2 half percent. I should say, like -- it
8 depends on how much they participate, I should say. So, but
9 depending on how much they participate, it would -- call it --
10 yes, in round numbers, they have 100 times more money than
11 needed.

12 **Q** Okay. And if we could go to the front of Exhibit 332.

13 (Document displayed)

14 **Q** And there were questions about, you know, what might have
15 been going on to make everybody beyond the media frenzy a
16 little worried at this time. Do you see, "Investor Lawsuits
17 Begin," at the top of the article?

18 **A** Yes.

19 **Q** And are you aware that as of the time of this article, the
20 plaintiff's firm had sued, alleging that August 7th "Am
21 considering" was a fraud that was revealed on August 8th?

22 Are you aware of that?

23 **MR. PORRITT:** Objection, Your Honor. That misstates
24 facts.

25 **THE COURT:** Sustained.

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1 **BY MR. SPIRO**

2 **Q** In this article, to you, you were still -- you were still
3 saying to the Saudi PIF, you were still saying to Yasir: Why
4 don't you come out and say the real truth of what happened in
5 that meeting, in those text messages, weren't you?

6 **A** Yes. And, um, I have to say that the thing that really
7 bothers me the most is that it's not actually investor
8 lawsuits.

9 It's class action law firms that pretend to have an --

10 **MR. PORRITT:** Objection, Your Honor. This is now a --
11 this is now a speech.

12 **THE COURT:** The answer will be stricken. It's
13 non-responsive, and inappropriate.

14 **BY MR. SPIRO**

15 **Q** Okay. I'm misremembering my question.

16 Regardless of class action lawsuits and their veracity,
17 okay, I'm just simply asking you that even though the Saudi PIF
18 and this article talk about how they're planning to invest in
19 the Tesla take-private, to you, you were saying to Yasir in
20 those text messages that even this, even this, is not nearly
21 what happened or strong as what happened in that room at Tesla.

22 **A** Correct.

23 **MR. SPIRO:** Nothing further.

24 **THE COURT:** All right. Thank you.

25 Any redirect?

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1 **MR. PORRITT:** Very briefly. Feel free to give a
2 hollow laugh when I say that, but it will be very brief,
3 Your Honor.

4 **FURTHER REDIRECT EXAMINATION**

5 **BY MR. PORRITT**

6 **Q** First of all, Mr. Spiro just asked you about an article or
7 a statement by Mr. Ron Baron on August 7th, about how he would
8 intend to roll the shares owned by his fund into any private
9 Tesla.

10 Do you recall that?

11 **A** Yes.

12 **Q** He made that public statement after you had tweeted
13 "Investor support is confirmed," isn't that correct?

14 **A** Yes.

15 **Q** Okay. If I can refer you -- if we can put up Exhibit 332.

16 (Document displayed)

17 **MR. PORRITT:** Your Honor, at this point there's
18 nothing further. That's all I will state. I'm done. Sorry.
19 I've completed my examination.

20 **THE COURT:** All right.

21 **MR. SPIRO:** Your Honor, we're going to have to clean
22 up some of the time zones in some of the exhibits. But other
23 than that, I don't have any more questions of Mr. Musk.

24 **THE COURT:** All right. Then, Mr. Musk, you are
25 excused as a witness. Thank you.

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1 **THE WITNESS:** Thank you, Your Honor.

2 (Witness excused)

3 **THE COURT:** All right. We might as well take our
4 break before the next witness. So we'll take a 20-minute
5 break. Thank you.

6 **THE COURTROOM DEPUTY:** All rise for the jury.

7 **THE COURT:** All right, take a break.

8 (Recess taken from 11:52 a.m. to 12:21 p.m.)

9 (The following proceedings were held outside of the
10 presence of the Jury)

11 **THE COURTROOM DEPUTY:** Court is reconvened.

12 **THE COURT:** Okay, you may bring the jury back.

13 **THE COURTROOM DEPUTY:** Yep.

14 **MR. APTON:** Your Honor, before we start, can we do the
15 Brinkman exhibits?

16 **THE COURT:** Oh, okay.

17 **MR. APTON:** So Your Honor, these are all or have been
18 ruled on already.

19 **THE COURT:** Okay.

20 **MR. APTON:** Some are in evidence already, though, so
21 apologies. It's 8, 10, 11, 12, 13, 14, 15, 17, 18, 21, 22, 23,
22 24, 25, 27, 53 and 171. We move to admit those that are not
23 already admitted, and also for permission to publish those to
24 the jury as Mr. Brinkman is testifying by deposition.

25 **MR. LIFRAK:** The list is correct, and we have no

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1 additional objections other than the ones that we have reserved
2 previously.

3 **THE COURT:** All right, then my ruling -- I think I've
4 ruled on all those -- stands. Those are all -- any objections
5 are overruled, and these are deemed admitted.

6 **MR. APTON:** Thank you, Your Honor.

7 (Trial Exhibits 8, 10, 11, 12, 13, 14, 15, 17, 18, 21, 22,
8 23, 24, 25, 27, 53 and 171 received in evidence.)

9 **THE COURT:** Okay, we are going to retrieve the jury.

10 (The following proceedings were held in the presence of
11 the Jury)

12 **THE CLERK:** All rise for the jury.

13 **THE COURT:** All right. Have a seat, everyone.
14 Welcome back. Good afternoon. We are now going to hear from
15 the plaintiff's next witness.

16 Ms. Tripodi?

17 **MS. TRIPODI:** Yes, Your Honor. Plaintiffs call Martin
18 Viecha.

19 **THE COURT:** All right.

20 **MARTIN VIECHA, PLAINTIFF'S WITNESS, SWORN**

21 **THE WITNESS:** Yes.

22 **THE COURTROOM DEPUTY:** Thank you. Please have a seat.

23 **THE WITNESS:** Thank you.

24 **THE COURTROOM DEPUTY:** Please speak clearly into the
25 microphone. State and spell your first and last name for the

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1 record.

2 **THE WITNESS:** Martin Viecha. M A-R-T-I-N,
3 V-I-E-C-H-A.

4 **THE COURT:** Thank you, Mr. Viecha.
5 You may proceed.

6 **MS. TRIPODI:** Your Honor, I have a witness binder for
7 both the Court and Mr. Viecha. May I approach?

8 **THE COURT:** Yep.
9 (Binder tendered to the Court)

10 **THE WITNESS:** Thank you.

11 **DIRECT EXAMINATION**

12 **BY MS. TRIPODI**

13 **Q** Good afternoon, jurors. And good afternoon, Mr. Viecha.

14 **A** Good afternoon.

15 **Q** I believe we met previously on Zoom, but nice to see you
16 again today.

17 **A** Nice to see you.

18 **Q** Are you currently employed at Tesla?

19 **A** Yes.

20 **Q** What is your current position?

21 **A** Vice-president of Investor Relations.

22 **Q** How long have you held that position?

23 **A** Um, as the head of IR for about five years. A bit over
24 five years.

25 **Q** When did you start working at Tesla?

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1 **A** I started working in October, 2017.

2 **Q** How did you come to work at Tesla in October of 2017?

3 **A** Um, I was told by the previous head of Investor Relations,
4 Jeff Evanson, that he's leaving the company. And I tried to
5 interview for the role.

6 **Q** Did you have a relationship with Mr. Evanson at that time?

7 **A** No.

8 **Q** And in August of 2018, you were VP of investor relations
9 at Tesla?

10 **A** I was Senior Director of Investor Relations.

11 **Q** As Senior Director of Investor Relations in 2018, can you
12 describe for the jury what your job function was?

13 **A** Absolutely. My job function was to speak with investors,
14 attend the investor conferences, write the shareholder letter,
15 host their earnings call. Those, those would be the main
16 tasks.

17 **Q** So you were responsible for being a point of contact with
18 both investment institutions and retail investors of Tesla?

19 **A** Um, really only institutional investors. At that time
20 there was no communication with retail.

21 **Q** I'm sure there are many different types of things you
22 discussed with institutional investors, but can you give the
23 jury a general overview of what some of those things may have
24 been in 2018?

25 **A** Absolutely. The -- you know, investors would be asking

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1 questions, anything from explaining battery technology,
2 explaining, you know, autopilot software, explaining the
3 manufacturing process of a Model 3, accounting practices. It
4 would be a very large variety of topics.

5 **Q** And were you responsible for providing responses to all
6 inquiries? Or were there times when you would direct those
7 inquiries to someone else?

8 **A** We were a team of two at that time, so some of the
9 responses would be directed to someone else, and some would be
10 done by me.

11 **Q** And by being directed to someone else, that was to the
12 other person on your team of two?

13 **A** Correct.

14 **Q** And was that other person at the time in 2018 Aaron Chew?

15 **A** Correct.

16 **Q** As Senior Director of Investor Relations in 2018, would
17 you interact with Elon Musk?

18 **A** Yes.

19 **Q** And on what occasions would you typically interact with
20 Mr. Musk?

21 **A** I would typically interact with Mr. Musk prior to the
22 earnings call, so when we were preparing for an earnings call
23 or when we were about to publish the quarterly shareholder
24 letter we would usually have a handful of meetings in
25 preparation for that.

VIECHA - DIRECT / MS. TRIPODI

1 **Q** Would you help to prepare Mr. Musk for the quarterly
2 earnings calls?

3 **A** Um, yes, we would run through the topics that will be
4 covered.

5 **Q** In 2018, did you follow Mr. Musk on Twitter?

6 **A** Yes.

7 **Q** Now, in July of 2018, do you recall Mr. Musk tweeting
8 about a British -- British cave diver who helped in the rescue
9 of trapped schoolboys?

10 **A** Yes.

11 **Q** And these tweets by Mr. Musk, am I correct that they came
12 up in some conversations you had with investors in 2018?

13 **A** Yes.

14 **Q** Were some of the investors unhappy with Mr. Musk's
15 decision to tweet?

16 **A** Yes. There were some investors that were -- would prefer
17 to stay off these topics.

18 **Q** In early August of 2018, can you recall Mr. Deepak Ahuja,
19 who was Tesla's CFO at the time, asking you to put together a
20 list of Tesla's current shareholders?

21 **A** Yes.

22 **MS. TRIPODI:** Your Honor, I would like to show the
23 witness Exhibit 143.

24 **THE COURT:** Okay.

25 **MR. SPIRO:** No further objection.

VIECHA - DIRECT / MS. TRIPODI

1 **THE COURT:** All right.

2 **MS. TRIPODI:** Your Honor, if we could move to admit
3 and to publish to the jury, please.

4 **THE COURT:** All right, so admitted, you may publish.

5 (Trial Exhibit 143 received in evidence.)

6 **BY MS. TRIPODI**

7 **Q** Mr. Viecha, do you see Exhibit 143?

8 **A** I do.

9 **Q** And this is a rather long email chain. You also have your
10 witness binder, so if it's easier to flip through in the
11 binder, feel free.

12 Do you generally recognize this email between you and
13 Mr. Ahuja that started on --

14 **MS. TRIPODI:** If we can go to the bottom page, which I
15 believe, Derek, maybe is 10.

16 (Document displayed)

17 **MS. TRIPODI:** Oh, maybe one more.

18 **BY MS. TRIPODI**

19 **Q** So it appears that this email chain started on August 4th.
20 Do you see that?

21 **A** I do.

22 **Q** Here, am I correct that Mr. Ahuja had asked you to put
23 together a table of the number of shares held by categories of
24 shareholders?

25 **A** That is correct.

VIECHA - DIRECT / MS. TRIPODI

1 Q At this time, did you have an understanding as to why you
2 were being asked to do that?

3 A Well, Deepak has not said this specifically. Given I was
4 aware of the meeting with the Saudi PIF at the end of July,
5 I -- I had a hunch of why he's trying to put together a list.

6 Q But when you were responding to Mr. Ahuja as of
7 August 4th, Mr. Ahuja had not said specifically to you why he
8 was requesting this information?

9 A No.

10 Q If you will look at the table that's on Page 9 and 10 of
11 the exhibit. So starting on Page 9, going over into Page 10.

12 (Document displayed)

13 Q Do you create this table?

14 A I believe I did.

15 Q And what was the purpose of this table?

16 A I -- I was asked to create a list of the largest
17 shareholders of Tesla, without any further commentary.

18 Q And in your email above the table that's dated August 4th,
19 you say (As read):

20 "Retail could be a lot more since Saudi PIF
21 almost certainly bought from some of our top
22 holders..."

23 Do you see that?

24 A Yes, I do.

25 Q How did you learn about the Saudis buying their shares?

VIECHA - DIRECT / MS. TRIPODI

1 **A** I learned about it from Deepak Ahuja, during my
2 conversation with him the day before our earnings call, which I
3 believe was July 31st.

4 **Q** And can you recall what specifically you learned in that
5 conversation?

6 **A** What Deepak mentioned is that the representatives of Saudi
7 PIF are in the building, meeting Elon. And that they have been
8 buying a lot of shares, probably about 5 percent of the
9 company, up until that point.

10 **Q** And was it your understanding that they had been buying
11 these shares in the open market?

12 **A** Yes.

13 **Q** In the same email, you say updated ownership figures would
14 be out in a month. Is that correct?

15 **A** That is correct.

16 **Q** And did you have an understanding as to whether the
17 updated ownership figures would include the Saudis' stake in
18 Tesla?

19 **A** That wasn't clear at that point, given only U.S.
20 companies, from my understanding, required to file a form
21 that's called a 13-F. That would show how many shares does
22 each institution own. Non-U.S. institutions don't necessarily
23 have to file this. So it wasn't clear whether that would come
24 in public filings.

25 **Q** Looking at Mr. Ahuja's prior email to you, at the bottom

VIECHA - DIRECT / MS. TRIPODI

1 of Page 10.

2 (Document displayed)

3 **Q** Mr. Ahuja noted -- oop, maybe scroll down a little bit
4 more --

5 (Document displayed)

6 **MS. TRIPODI:** Great, thanks.

7 **BY MS. TRIPODI**

8 **Q** Mr. Ahuja notes (As read):

9 "I want to send Elon some more information in
10 a simple excel file rather than this fancy
11 slide. Please show percentages in the column
12 to the right of the shares."

13 Do you see that?

14 **A** Yes.

15 **Q** So you understood at this point that you were gathering
16 this information for Mr. Ahuja to then provide it to Mr. Musk.
17 Correct?

18 **A** Correct.

19 **Q** Did you understand why you were providing this information
20 through Mr. Ahuja to Mr. Musk?

21 **A** I wasn't told specifically at that time.

22 **Q** Did you have any understanding?

23 **A** I don't want to speculate, but I -- from -- I understood
24 that it has to do something with a takeover bid.

25 **Q** If we can go to the first page of Exhibit 143.

VIECHA - DIRECT / MS. TRIPODI

1 And looking at the top email from you, this was dated
2 August 7th. You and Mr. Ahuja were still discussing the share
3 ownership, correct?

4 **A** Correct.

5 **Q** And specifically, if we look at your email from August 7th
6 at 2:39, which I will represent for the record was UTC time --
7 I know defense counsel has mentioned some issues with time
8 zones. So this was approximately 7:39 a.m. Eastern Standard
9 Time. You write (As read):

10 "Art wrote me an email about 2 hours ago that
11 he's pulling the retail data now."

12 Do you see that?

13 **A** Yes.

14 **Q** Who was Art?

15 **A** Art was a CEO of a consultancy that was pulling out the
16 retail ownership data for us at that time. Retail ownership
17 data is not easy to just, like, Google or something.

18 **Q** So the files you had previously sent to Mr. Ahuja did not
19 include this retail data from Art. Correct?

20 **A** The -- the file had an estimated retail data, which would
21 have to be -- whatever's the unaccounted-for shares would be
22 estimated to be retail. But we only waited for a more precise
23 number.

24 **Q** To your knowledge, since you were still waiting on this
25 more precise number from Art, had this list of investors been

VIECHA - DIRECT / MS. TRIPODI

1 sent to Mr. Musk?

2 **A** I would not be aware.

3 **Q** On August 7th of 2018, am I correct that you were
4 preparing to fly to New York City for an investor conference?

5 **A** That is correct.

6 **Q** Do you recall when you flew to New York?

7 **A** Maybe midday, but I'm not entirely sure.

8 **MS. TRIPODI:** If we could introduce Exhibit 8, please.
9 It's already been admitted.

10 (Document displayed)

11 **BY MS. TRIPODI**

12 **Q** Mr. Viecha, do you recognize the tweet from Mr. Musk in
13 Exhibit 8?

14 **A** Yes.

15 **Q** Do you recall when you first saw this tweet?

16 **A** Yes.

17 **Q** When was that?

18 **A** It was at the time that it was -- you know, that it was
19 tweeted.

20 **Q** Was this -- did you see this prior to you traveling to
21 New York?

22 **A** Yes.

23 **Q** And am I correct that right after this initial tweet that
24 we've seen in Exhibit 8 was posted, you started receiving
25 emails from Tesla investors?

VIECHA - DIRECT / MS. TRIPODI

1 **A** That is correct.

2 **Q** Is it fair to say that you started receiving those emails
3 immediately?

4 **A** Yes.

5 **Q** If we could look at Exhibit 146.

6 (Document displayed)

7 **MS. TRIPODI:** Your Honor, I don't believe there is any
8 objection to 146.

9 **MR. LIFRAK:** No further objection.

10 **THE COURT:** All right.

11 **MS. TRIPODI:** Your Honor, if we could admit, please,
12 and publish to the jury.

13 **THE COURT:** You may publish. It's admitted.

14 (Trial Exhibit 146 received in evidence.)

15 (Document displayed)

16 **BY MS. TRIPODI**

17 **Q** Mr. Viecha, if you will take a look at Exhibit 146.

18 **A** Yes.

19 **Q** Do you recognize this email as one that you've received in
20 response to the tweet that we just saw in Exhibit 8?

21 **A** Yes.

22 **Q** Who is Itay Michaeli?

23 **A** Itay Michaeli is a sell-side analyst.

24 **Q** And when you say "sell-side analyst," can you explain for
25 the jury what you mean?

VIECHA - DIRECT / MS. TRIPODI

1 **A** Absolutely. So the investment community is split into buy
2 side and sell side. Sell side writes research about companies
3 and sells it to the buy side. Buy side doesn't produce
4 research. Buy side actually invests in companies. So sell
5 side would be a research firm; buy side would be an investor.

6 **Q** So this email generally represents an email from a
7 sell-side investor to you regarding the tweet. Is that
8 correct?

9 **A** That is correct.

10 **Q** And in his email, Mr. Michaeli writes (As read):

11 "The employee letter didn't make clear
12 whether there is an actual transaction on the
13 table (with secured financing) or if this is
14 more of a strategic announcement to consider
15 pursuing such transaction."

16 Did I read that correctly?

17 **A** Yes.

18 **Q** When Mr. Michaeli references the employee letter here, did
19 you understand that he was referencing the blog post that Tesla
20 published on its website?

21 **A** I understood it to be Elon's blog post that he's referring
22 to.

23 **MS. TRIPODI:** And if we could pull up Exhibit 12, just
24 so we're clear.

25 (Document displayed)

VIECHA - DIRECT / MS. TRIPODI

1 **BY MS. TRIPODI**

2 **Q** Exhibit 12 is the blog post. Do you see that, Mr. Viecha?

3 **A** Yes, I do.

4 **Q** Did you understand that this was what Mr. Michaeli was
5 referring to?

6 **A** Yes.

7 **Q** Your response to Mr. Michaeli says (As read):

8 "The very first tweet mentioned a firm
9 offer."

10 Am I correct?

11 **A** Yes.

12 **MS. TRIPODI:** If we could look at this exhibit,
13 please, 146, with Exhibit 8, Mr. Musk's tweet.

14 (Documents displayed)

15 **BY MS. TRIPODI**

16 **Q** And first, Mr. Viecha, let me ask you: After seeing
17 Mr. Musk's tweet, had Mr. Musk, himself, provided you with any
18 information?

19 **A** Sorry; could you say it again?

20 **Q** Sure. After seeing this tweet, the August 8th tweet, the
21 "Funding secured" tweet, had Mr. Musk provided you with any
22 information regarding the tweet?

23 **A** No.

24 **Q** Had anyone at Tesla, in the immediate aftermath of seeing
25 this tweet, provided you with any information regarding the

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1 tweet?

2 **A** Yes. I had a call with Tesla general counsel as well as
3 the CFO, Deepak Ahuja.

4 **Q** Do you recall when your conversation with Tesla general
5 counsel and Mr. Ahuja was?

6 **A** A few minutes after the tweet came out.

7 **Q** Okay. So looking back at the tweet that's in Exhibit 8,
8 and Mr. Michaeli's email, you had responded (As read):

9 "The very first tweet mentioned a firm
10 offer."

11 Looking at the tweet in Exhibit 8, which part of this
12 tweet mentioned a firm offer?

13 **A** I think, um --

14 (Witness examines document)

15 **A** When I -- given I knew everything that I was aware of at
16 the time, after I read the tweet, it was a, you know, offer by
17 the bidder. And I used my -- my own words to describe what my
18 understanding of the situation was.

19 **Q** Does the "I am" -- or the "Am considering" portion of that
20 tweet, does that indicate a firm offer to you?

21 **A** I really didn't think about it in separate terms. I saw
22 the tweet, understood that what I witnessed a week prior to
23 that has become public. And based on my prior knowledge, I
24 used my own words, saying that there's a firm offer.

25 **Q** Did you interpret "Funding secured" as being part of the

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1 firm offer?

2 **A** I really didn't think about it as a -- as a separate
3 statement. I saw the tweet, and based on my prior
4 understanding of the events, um, for me there was an offer and
5 acceptance, based on my conversation with Deepak a week prior
6 to that.

7 **Q** At this point in time, had you seen anything in writing
8 confirming your belief that there was a firm offer?

9 **A** No, I had not.

10 **Q** And at this point in time, you mentioned that you had had
11 a conversation with Mr. Ahuja regarding the PIF meeting on
12 July 31st. Did you know whether the Saudi PIF had agreed to
13 fund a going-private at \$420 per share?

14 **A** Well, Deepak Ahuja told me after the meeting with the
15 Saudi PIF, is that they have once again offered to buy Tesla,
16 and Elon said yes. There was no mentioning our conversation
17 about the share price at which it would be taken over.

18 **Q** And did you know whether there had been any discussion
19 with the Saudi PIF, based on what Mr. Ahuja conveyed to you,
20 regarding the overall amount of the funding that would be
21 needed for such a transaction?

22 **A** From my understanding from conversation with Mr. Ahuja,
23 this would be acquiring of company or taking over of a company.

24 **Q** Was there a specific amount of funding that you understood
25 to have been discussed?

VIECHA - DIRECT / MS. TRIPODI

1 **A** No.

2 **MS. TRIPODI:** If we can show the witness Exhibit 150,
3 please.

4 (Document displayed to the Witness)

5 **MS. TRIPODI:** Which, again, I believe Your Honor
6 overruled any objections on.

7 **MR. LIFRAK:** That's correct.

8 **THE COURT:** All right, it's admitted.

9 (Trial Exhibit 150 received in evidence.)

10 **MS. TRIPODI:** Thank you.

11 If you will publish, please?

12 (Document displayed)

13 **BY MS. TRIPODI**

14 **Q** Mr. Viecha, do you recognize Exhibit 150?

15 **A** Yes.

16 **Q** Is this another email you received in response to
17 Mr. Musk's "Funding secured" tweet?

18 **A** Um, yes.

19 **Q** Who is Bradley Erickson?

20 **A** Bradley Erickson is another sell-side analyst from
21 KeyBank.

22 **Q** In his email to you, Mr. Erickson wrote (As read):

23 "He" -- who I take to mean Elon -- "said
24 financing is secured but in the letter he
25 doesn't address this. Can you clarify?"

VIECHA - DIRECT / MS. TRIPODI

1 Do you see that?

2 **A** Yes.

3 **Q** Did you understand Mr. Erickson to be questioning the
4 financing here?

5 **A** Um, I understood that at the time, there were many people
6 trying to figure out whether this is even real. And whether
7 there is -- you know, what would the details be. So I
8 understood from his email that he's trying to get some
9 additional color.

10 **Q** But am I correct that Mr. Erickson is specifically asking
11 you regarding financing being secured?

12 **A** Yes, that's what his email mentions.

13 **Q** And you responded:

14 "I can only say that the first tweet clearly
15 stated that 'financing is secured.' Yes,
16 there is a firm offer."

17 Did I read your response correctly?

18 **A** Yes.

19 **Q** And if we can look at this again with Exhibit 8, please.

20 (Document displayed)

21 **Q** What part of the tweet that we see in Exhibit 8 led you to
22 say to Mr. Erickson "Yes, there is a firm offer"?

23 **A** My statement was based on my understanding of the
24 situation, due to meeting with Deepak, one week prior to the
25 call -- sorry -- to the tweet.

VIECHA - DIRECT / MS. TRIPODI

1 Given we've seen a repeated attempt by the Saudi PIF, and
2 after a repeated event Elon said yes, it was my understanding
3 that there was an offer and acceptance. So I was basing this
4 on my own understanding of the situation.

5 **Q** Had you previously been part of what you've characterized
6 as the Saudis' repeated attempts?

7 **A** I have -- this was communicated to me by Deepak Ahuja on
8 the 31st.

9 **Q** Understood. If we can look at Exhibit 58, please.

10 (Document displayed to the Witness)

11 **MS. TRIPODI:** And again, I don't believe there was any
12 objections.

13 **MR. LIFRAK:** No further objections.

14 **THE COURT:** Admitted. You may publish.

15 (Trial Exhibit 58 received in evidence.)

16 (Document displayed)

17 **MS. TRIPODI:** Thank you, Your Honor.

18 **BY MS. TRIPODI**

19 **Q** Mr. Viecha, do you recognize this email?

20 **A** Yes, I do.

21 **Q** And who is Owuraka Koney?

22 **A** Owuraka Koney is an analyst at an investment firm,
23 Jennison.

24 **Q** Was Jennison also a substantial shareholder of Tesla at
25 this time?

VIECHA - DIRECT / MS. TRIPODI

1 **A** Yes.

2 **Q** Looking at the first email in the chain, at the bottom of
3 Page 1, Mr. Koney has only written in the subject line, "call
4 me back." Do you see that?

5 **A** Yes.

6 **Q** And you respond that you were on a plane to New York City.
7 Do you see that?

8 **A** Yes.

9 **Q** And then you state:

10 "Did you read our official blog post on this
11 topic?"

12 Is that correct?

13 **A** That's what I wrote.

14 **Q** Were you referring to the August 7th blog post that we
15 previously looked at, Exhibit 12?

16 **A** Yes, that's the one I was referring to.

17 **Q** And Mr. Koney replied to you confirming that he saw the
18 Tesla blog post on August 7th, but he added:

19 "Nothing on funding, though?"

20 Do you see that?

21 **A** Yes.

22 **Q** Were you aware at this time that you were having the
23 conversation with Mr. Koney that the blog post in Exhibit 12
24 did not mention funding?

25 **A** I can't recall, but from what I remember, there was no

VIECHA - DIRECT / MS. TRIPODI

1 mention of the Saudi PIF at that time.

2 **Q** And was it your understanding at the time of this tweet
3 that the Saudi PIF was the source of funding for the
4 going-private?

5 **A** Based on my conversation with Deepak, it was my
6 understanding that Saudi PIF would be taking over the company.

7 **Q** So in your email reply to Mr. Koney in the middle of
8 Exhibit 58, you write (As read):

9 "The very first tweet simply mentioned
10 'Funding secured' which means that that is a
11 firm offer."

12 Did I read that correctly?

13 **A** Yes.

14 **Q** And at this point Mr. Koney responds (As read):

15 "'Firm offer' means there is a commitment
16 letter or is this a verbal agreement?"

17 Do you see that?

18 **A** Yes.

19 **Q** And you respond (As read):

20 "I actually don't know, but I would assume
21 that given we went full-on public with this,
22 the offer is as firm as it gets."

23 Do you see that?

24 **A** Yes.

25 **Q** Again, was there anything specific in the tweet of

VIECHA - DIRECT / MS. TRIPODI

1 August 8th, the "Funding secured" tweet, that made you believe
2 the offer was as firm as it gets?

3 **A** As I responded to Mr. Koney, I said I don't actually know
4 if there's a commitment letter or this -- or is this a verbal
5 agreement.

6 **Q** But you did respond that the offer is as firm as it gets.
7 Correct?

8 **A** What I responded is I don't actually know, but I would
9 assume that, given we went full-on public with this, the offer
10 is as firm as it gets.

11 **Q** And your assumption that the offer is as firm as it gets,
12 my question is related to the tweet. What part of that tweet
13 led you to believe that your assumption, "The offer is as firm
14 as it gets," was correct?

15 **A** The assumption was based on my meeting with Deepak. And
16 as I mentioned before, the conversation we had about the
17 repeated attempt of the Saudi PIF and an offer and a -- and an
18 acceptance.

19 **Q** Mr. Koney's response in Exhibit 58 was (As read):

20 "We're happy shareholders but the way this
21 was disclosed was all very unusual. And a
22 tweet, which has been used as a medium of
23 humor amongst other things, is hardly the
24 right place to confirm the funding is secure.
25 We will need a little bit more than that."

VIECHA - DIRECT / MS. TRIPODI

1 Is that correct?

2 **A** Yes.

3 **Q** Was it your understanding from this series of emails with
4 Mr. Koney that Mr. Koney had questions regarding funding?

5 **A** Yes, it was my understanding.

6 **Q** Did you respond to Mr. Koney's feedback regarding the
7 tweeting?

8 **A** Um, sorry, I'm not following. Could you --

9 **Q** Sure. Mr. Koney was the last person to send an email on
10 this chain. I'm just asking, did you recall responding to
11 Mr. Koney?

12 **A** No, I don't recall responding.

13 **Q** If we can move to Exhibit 151, please.

14 **MS. TRIPODI:** Again, I don't believe there are
15 objections.

16 **MR. LIFRAK:** Correct, no further objections.

17 **THE COURT:** Admitted. You may publish.

18 (Trial Exhibit 151 received in evidence.)

19 **MS. TRIPODI:** Thank you, Your Honor.

20 (Document displayed)

21 **BY MS. TRIPODI**

22 **Q** Mr. Viecha, is this another email you received in response
23 to the "Funding secured" tweet?

24 **A** Yes, it is.

25 **Q** Who is Toni Sacconaghi?

VIECHA - DIRECT / MS. TRIPODI

1 **A** Toni Sacconaghi is a sell-side analyst from Bernstein.

2 **Q** Looking at the first page of this exhibit, Mr. Sacconaghi
3 asks (As read):

4 "What does 'Financing secured' actually mean?

5 Are you assuming Tesla will need 60 billion

6 plus in financing, or assuming that many

7 shareholders don't take the offer and Tesla

8 needs less? Big difference. 'Financing

9 secured' implies the former."

10 Do you see that?

11 **A** Yes.

12 **Q** Is it fair to say that you understood Mr. Sacconaghi had
13 questions regarding the funding for the going-private
14 transaction?

15 **A** It is my understanding that he is trying to understand
16 whether there is a single major buyer or a -- whether this
17 transaction is dependent on a portfolio of buyers.

18 **Q** Had you had any discussions with Mr. Ahuja or anyone else
19 regarding a potential portfolio of buyers for the
20 going-private?

21 **A** In the first conversation with Deepak Ahuja he made it
22 clear that this would be a purchase of the company or takeover.
23 And given I was aware that Saudi PIF is large enough to easily
24 be able to execute this transaction by itself, I had no doubt
25 that this is -- there is no necessity for another entity.

VIECHA - DIRECT / MS. TRIPODI

1 Q At this point in time, on August 7th, had you been part of
2 any discussions regarding the potential for existing Tesla
3 shareholders rolling over their shares into the going-private?

4 A I have not.

5 Q Your response to Mr. Sacconaghi here is (As read):

6 "It means that financing is secured
7 regardless of other assumptions."

8 Did I read that correctly?

9 A Yes.

10 Q What did you mean by "regardless of other assumptions"?

11 A What I meant was that Toni was trying to understand
12 whether Tesla needs its investors to roll over to the private
13 entity or whether that's not necessary. And I wanted to make
14 it clear that that's an unnecessary assumption.

15 Q But am I correct that you just testified you were not part
16 of any discussions regarding existing Tesla shareholders
17 rolling their shares over into the going-private?

18 A That is correct. And it was my understanding, based on
19 the conversation with Deepak, that that's not a necessity.

20 Q Were you aware that Mr. Musk had expressed a desire that
21 existing shareholders would roll their shares over into a
22 private Tesla?

23 A I have learned that from the tweet on August 8th --
24 August 7th.

25 Q And do you believe you learned that after responding to

VIECHA - DIRECT / MS. TRIPODI

1 Mr. Sacconaghi?

2 **A** Um, I believe that the tweet happened before my email to
3 Mr. Sacconaghi.

4 **Q** So you were aware at the time that you wrote back to
5 Mr. Sacconaghi that Mr. Musk was interested in rolling existing
6 shareholders into the Tesla going-private?

7 **A** From my understanding, it was an option that other
8 shareholders would have, not a necessity.

9 **Q** So by it being considered an option by you, is it fair to
10 say that you had some uncertainty as to what the ultimate
11 structure of this going-private would look like at this point?

12 **A** Um, based on Elon's tweet, what he mentioned publicly was
13 that all current shareholders would be able to be part of the
14 private entity. I wasn't quite -- I didn't have any experience
15 of how that sort of structure would look like at that time.

16 **Q** Also on the first page of Exhibit 151, Mr. Sacconaghi has
17 asked another question. He says (As read):

18 "Has this possible buyer been discussed with
19 Tesla's board or shareholders prior to
20 today?"

21 Do you see that?

22 **A** Yes, I do.

23 **Q** Okay. And you replied (As read):

24 "This wasn't discussed with any shareholders
25 prior to today's tweet."

VIECHA - DIRECT / MS. TRIPODI

1 Did I read that correctly?

2 **A** Yes.

3 **Q** So, did your email confirm your understanding that there
4 had been no discussions with Tesla shareholders about the
5 going-private transaction prior to August 7th of 2018?

6 **A** Yeah, the only shareholder this was discussed with was the
7 Saudi PIF.

8 **MS. TRIPODI:** If we can look at Exhibit 147, please.
9 And I don't believe defense counsel has objections?

10 **MR. LIFRAK:** No further objections.

11 **THE COURT:** Admitted. It may be published.

12 (Trial Exhibit 147 received in evidence.)

13 (Document displayed)

14 **MS. TRIPODI:** Thank you, Your Honor.

15 **BY MS. TRIPODI**

16 **Q** Mr. Viecha, do you recognize this email?

17 **A** Yes, I do.

18 **Q** And do you recall receiving this email?

19 **A** Yes, I do.

20 **Q** If we can look to the bottom of Page 1.

21 Actually, I'm sorry, Page 2. This is an email from Matt
22 Fassnacht. Did I say that correctly?

23 **A** I think so.

24 **Q** Who is Mr. Fassnacht?

25 **A** He's an investor.

VIECHA - DIRECT / MS. TRIPODI

1 Q And was he associated with HHR?

2 A That is correct.

3 Q Am I correct that he was the portfolio manager or a
4 portfolio manager at HHR?

5 A That is correct, he was a portfolio manager at HHR.

6 Q And was HHR a smaller hedge fund?

7 A Correct.

8 Q At this time was HHR invested in Tesla?

9 A As far as I believe, it was.

10 Q If we can look at the middle of Page 1, the timestamp is
11 13:25. Mr. Aaron Chew -- and before I continue, Mr. Chew was
12 part of your team, correct?

13 A That is correct.

14 Q He was the other -- in the team of two, he was the other
15 one. Correct?

16 A Yes.

17 Q So Mr. Chew forwarded a message to you and Mr. Ahuja,
18 Tesla's CFO, regarding the initial feedback from HHR. Do you
19 see that?

20 A Yes.

21 Q And Mr. Fassnacht, lower down in the email, writes that
22 HHR will not support a buyout, and that he felt betrayed and
23 that he can't own private entities.

24 Do you see that?

25 A Yes.

VIECHA - DIRECT / MS. TRIPODI

1 Q And you replied to Mr. Chew, saying that (As read):

2 "The majority of our holders want to stay
3 with us but many of them do not have a
4 mandate to own private companies."

5 Did I read that correctly?

6 A Yes.

7 Q Can you explain for the jury what a mandate regarding
8 private companies is?

9 A Absolutely. When institutional investors hold a stake in
10 companies, in some cases, the investors of those institutional
11 investors want liquidity. They want to be -- access their cash
12 whenever -- or their savings whenever they want to. Private
13 companies have -- also have shares, but they're less liquid.
14 And as a result, some investment institutions would only be
15 allowed to own shares in a publicly-traded company but not in a
16 private company.

17 Q At this time did you have a general sense of certain
18 institutions that might have a mandate preventing them from
19 owning shares in a private company?

20 A Sorry, could you please say that again?

21 Q Sure. At this point in time, did you generally have an
22 understanding of what institutions might have a mandate that
23 would prevent them from owning shares in a private Tesla?

24 A Um, at this point, very few. It was my understanding at
25 that time that every major institution, whether it's Fidelity,

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1 T. Rowe, BlackRock, State Street, et cetera, all the major
2 institutions are naturally able to hold both. It was a matter
3 of smaller institutions, usually, that they were not able to
4 own private company shares.

5 Q And with respect to an institution like T. Rowe, you
6 mentioned that they were able to hold both, or that you believe
7 they were able to hold both. Is that correct?

8 A That is correct.

9 Q Did you have an understanding as to whether the fund that
10 held shares of public Tesla could also own shares of private
11 Tesla? Meaning that same fund.

12 A With T. Rowe, Tesla shares were held across more than the
13 ten funds. And it was our understanding that some of those
14 funds would and some of those funds would not be able to hold
15 Tesla shares.

16 Q Did you have an understanding of what funds those were?

17 A No.

18 Q After the tweets came out, did you do some research to
19 determine what funds might be able to hold shares in a private
20 Tesla?

21 A I've held several conversations with our large investors.

22 Q Did you get to hold some of those conversations in person
23 while you were at the investor conference?

24 A Probably, but I cannot recall.

25 Q But is it fair to say that prior to the tweets, you

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1 understood that some of Tesla's shareholders might have a
2 mandate that would prevent them from owning shares in a private
3 Tesla?

4 **A** Yes.

5 **Q** Were you the only one with knowledge of this at Tesla? Or
6 did someone else have this information?

7 **A** I haven't discussed this with anyone.

8 **Q** Do you know whether Mr. Chew, your team member, was also
9 aware that some funds might have a mandate against holding
10 shares in a private Tesla?

11 **A** I wouldn't remember. I don't want to speculate.

12 **Q** Aside from this email with Mr. Ahuja, the CFO, and
13 Mr. Chew, your team member, did you convey this email -- I'm
14 sorry.

15 Did you convey this information regarding funds that might
16 have a mandate preventing them from owning shares in private
17 Tesla, did you convey that information to anyone else?

18 **A** Um, I cannot recall, but I do remember communicating about
19 this with Deepak, to make sure that he's aware who can and who
20 cannot.

21 **Q** Do you recall whether those communications were
22 post-August 7th "Funding secured" tweet?

23 **A** Yes, they were post-August 7th tweet.

24 **MS. TRIPODI:** If we can now look at Exhibit 155,
25 please. And I don't believe there are any outstanding

VIECHA - DIRECT / MS. TRIPODI

1 objections to this.

2 **MR. LIFRAK:** No further objections.

3 **THE COURT:** Admitted.

4 (Trial Exhibit 155 received in evidence.)

5 (Document displayed)

6 **MS. TRIPODI:** Thank, Your Honor.

7 **BY MS. TRIPODI**

8 **Q** Do you recall sending this email, Mr. Viecha?

9 **A** Um, I recall receiving this email.

10 **Q** Oh, my apologies. I mixed up the From and To.

11 So you recall receiving this from Mr. Chew?

12 **A** Yes .

13 **Q** And Exhibit 155, am I correct that this reflects
14 conversations that the investor relations department, you and
15 Mr. Chew, had with existing Tesla shareholders?

16 **A** Our -- our conversations with Aaron would not overlap. So
17 I -- I believe that I had some of my own investor feedback in
18 my emails. But we wouldn't be having conversations together.
19 We would be having separate sets of conversations.

20 **MS. TRIPODI:** Ms. Ayala, has this been published to
21 the jury?

22 **THE COURTROOM DEPUTY:** Uh-huh.

23 **MS. TRIPODI:** Thank you.

24 **THE COURTROOM DEPUTY:** You're welcome.
25

VIECHA - DIRECT / MS. TRIPODI

1 BY MS. TRIPODI

2 Q So you had some conversations with Tesla investors, and
3 Mr. Chew may have had separate conversations?

4 A Yes.

5 Q Do you recall with whom you spoke?

6 A Um, I have spoken to Fidelity, some portfolio managers of
7 T. Rowe Price, PRIMECAP, Allianz; I believe, UBS. Quite a few
8 to remember off the top of my head.

9 Q Okay. If I direct your attention, in Exhibit 155, under
10 "ENCOURAGING RESPONSES."

11 A Uh-huh.

12 Q There are quotes in this section from T. Rowe, Fidelity,
13 and PRIMECAP. Correct?

14 A Correct.

15 Q And did you speak -- I believe you just testified that you
16 had talked to Fidelity -- Fidelity, T. Rowe and PRIMECAP,
17 correct?

18 A Yes.

19 Q So would the feedback that we see in this email, would
20 that have been feedback that you received?

21 A Each of those institutions would have, easily, 15, 20
22 different portfolio managers. So it's likely, it's possible
23 that Aaron spoke to different folks than I have spoken to. But
24 yes, I've definitely spoken to T. Rowe and Fidelity.

25 Q So looking at T. Rowe's feedback, the paragraph indicates

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1 (As read):

2 "The issue will come down to how much of a
3 private illiquid stake our PMs are willing to
4 retain; it's likely that most will but with a
5 smaller stake than they currently own because
6 of the liquidity risk."

7 Do you see T. Rowe's comment?

8 **A** Yes.

9 **Q** Did you have that conversation with T. Rowe?

10 **A** I've had a similar conversation along the lines of: Yes,
11 we can hold private company shares, but probably less than we
12 would -- would be able to own in a publicly-traded company.

13 **Q** So is it fair to say what we see here in this bullet point
14 with respect to T. Rowe, that it comports with your general
15 understanding of some restrictions that T. Rowe funds may have
16 had?

17 **A** Specifically to T. Rowe, yes, this reflects my
18 understanding.

19 **Q** And if we can look at the comment from Fidelity, they
20 provided similar feedback in the next paragraph, stating

21 (As read):

22 "Each of the PMs are unlikely to be able to
23 hold as high a number of shares as we do
24 today. The key here you have to figure out
25 is how to be private but still have liquidity

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1 (sic) security."

2 Do you see those comments?

3 **A** Yes.

4 **Q** And do you recall whether Fidelity conveyed those comments
5 to you?

6 **A** I remember that this was a comment from one out of 60
7 portfolio managers, Sonu Kalra, and it was my understanding
8 that Fidelity would be able to hold private shares, just a
9 lower quantity than publicly-traded shares, just like T. Rowe.

10 **Q** Did you have any understanding as to how much of a lower
11 quantity they would have to hold?

12 **A** No.

13 **Q** Did you do any work to determine how much of a lower
14 quantity they would have to hold?

15 **A** I have asked; I don't recall getting an answer.

16 **MS. TRIPODI:** If we can turn to the portion of the
17 email bearing the heading "FRUSTRATED FEEDBACK."

18 **BY MS. TRIPODI**

19 **Q** There are five bullet points on the second page. Do you
20 see that?

21 **A** Yes.

22 (Document displayed)

23 **Q** If we can focus on the first bullet point, please. The
24 feedback is from Diametric?

25 **A** Yes.

VIECHA - DIRECT / MS. TRIPODI

1 Q And it states (As read):

2 "We can't own private investments because we
3 need liquidity."

4 A Yes.

5 Q Did I read that correctly?

6 A That is correct.

7 Q And the third bullet point, the feedback from an unnamed
8 shareholder is (As read):

9 "...we can no longer participate because we
10 aren't allowed to own private companies."

11 Did I read that correctly?

12 A Correct.

13 Q The bullet points that are summarized here, was this the
14 only frustrated feedback you received from investors relating
15 to their inability to own shares in a private company?

16 A Well, this is feedback received by my colleague, Aaron,
17 not myself.

18 I do remember some investors mentioning that they wouldn't
19 be able to own a private stake, but as I mentioned before,
20 usually significantly smaller investors. To put things into
21 context, the likes of Fidelity, T. Rowe, et cetera, manage well
22 over a trillion dollars in AUM. Something like Diametric
23 Capital would be, you know, \$100 million? It would be quite a
24 disproportionate size. Yes, there would be smaller investors
25 who would state that they cannot own private-company.

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1 **Q** And did you have any sense from Mr. Musk that these
2 smaller investors were not as important as the larger
3 institutional investors?

4 **A** No.

5 **Q** So the feedback from these smaller investors did still
6 matter, correct?

7 **A** Yes. Yes.

8 **MS. TRIPODI:** If we can look at Exhibit 161, please.
9 And I don't believe defense counsel has any objection?

10 **MR. LIFRAK:** No objection.

11 **THE COURT:** Admitted. You may publish.

12 **MS. TRIPODI:** Thank you, Your Honor.
13 (Trial Exhibit 161 received in evidence.)
14 (Document displayed)

15 **BY MS. TRIPODI**

16 **Q** Mr. Viecha, do you recognize this email?

17 **A** Yes.

18 **Q** Did you send this email to Mr. Ahuja and Todd Maron on
19 August 19, 2018?

20 **A** Yes, I did.

21 **Q** And am I correct that at this time, Mr. Todd Maron was the
22 general counsel for Tesla?

23 **A** That is correct.

24 **Q** So in this email you write (As read):

25 "In the past few days, I either met in person

VIECHA - DIRECT / MS. TRIPODI

1 or spoke on the phone with FIDO" --

2 Fidelity, I assume?

3 **A** Correct.

4 **Q** (As read)

5 "... T. Rowe, Jennison, Capital World,
6 Capital International, PRIMECAP, Baron
7 Capital, UBS O'Connor, and many others."

8 Do you see that?

9 **A** Yes.

10 **Q** Looking at Point 4 of your email, titled "Privatization"
11 and then a subpoint (a):

12 "Can't hold private entity."

13 **A** Yes, I can see it now.

14 **Q** Okay. There we go.

15 **A** Yes.

16 **Q** Here, you emphasize that quite a few midsize investors
17 share their frustration that they don't have a mandate to hold
18 a stake in a private company. Do you see that?

19 **A** Yes.

20 **Q** Now, I believe in my previous question you talked about
21 large investors like T. Rowe, Fidelity --

22 **A** Correct.

23 **Q** -- and small investors. Can you clarify for the jury in
24 your mind what constitutes a midsize investor?

25 **A** Midsize investors, I would think, you know, about 20 to

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1 30 billion of AUM, compared to trillions, of the large
2 investors that I've spoken about.

3 Q And did you have any reason to believe at this time that
4 midsize investors were not important to the going-private?

5 A No.

6 Q Does this email, looking at it now, does this accurately
7 summarize your conversations with investors in the days leading
8 up to August 19th?

9 A Yes. It did that at time, for sure.

10 Q Overall, if you could characterize the feedback you
11 received from midsize investors, is it fair to say that a
12 number of midsize investors had a mandate against holding
13 shares in a private company?

14 A Yeah, there were some that had a mandate against holding
15 shares in a private company.

16 Q And is it also correct that the smaller institutional
17 investors were going to have difficulty holding shares in a
18 private Tesla?

19 A Again, some, some would have this difficulty. That's
20 correct.

21 Q And is it fair to say that with respect to the larger
22 institutions, there were some funds that wouldn't have trouble
23 owning shares in a private Tesla, but some funds would have
24 difficulty?

25 A Um, from my understanding, the majority of large

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1 institutions would be able to hold private shares.

2 Q The majority, you say.

3 A Um, of large institutions, yes.

4 Q And was that information that you discovered after the
5 "Funding secured" tweets?

6 A Um, it was something that I have always been aware of,
7 given some of these institutions have been investors at
8 Space -- at SpaceX for a long time, that I knew is a
9 privately-traded entity. So I would have some level of
10 understanding of large institutions holding private shares
11 prior to the tweet.

12 Q Are you familiar with the ownership structure of SpaceX?

13 A No. Other than it's a private, private entity.

14 Q You just knew that there were several institutions that
15 held in Tesla that also held in SpaceX?

16 A Correct.

17 Q In August of 2018, so ten days after the "Funding secured"
18 tweet, were you aware that Mr. Musk gave an interview or spoke
19 with a reporter from the *New York Times*?

20 A Um, I remember reading the interview, yes.

21 Q And the interview that we're referring to is an article
22 that was published on August 17th. Does that refresh your
23 recollection?

24 A Yes.

25 Q Did you receive emails from investors in response to that

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1 article?

2 **A** Yes.

3 **MS. TRIPODI:** If we could look at Exhibit 160, please.

4 (Document displayed)

5 **MS. TRIPODI:** And I don't believe defense counsel has
6 any objection.

7 **MR. LIFRAK:** No further objection.

8 **THE COURT:** All right. 160 is admitted.

9 (Trial Exhibit 160 received in evidence.)

10 (Document displayed)

11 **BY MS. TRIPODI**

12 **Q** Is this one of the emails you received on August 17th
13 regarding this *New York Times* interview?

14 **A** Yes.

15 **Q** Who is James Sperling?

16 **A** James Sperling is a hedge fund portfolio manager of a
17 hedge fund arm of UBS.

18 **Q** And was that particular hedge fund arm invested in Tesla
19 at that point?

20 **A** I believe it was.

21 **Q** So midway through the first page of Exhibit 160,
22 Mr. Sperling asked you:

23 "Any luck on the full interview transcript?"

24 Do you see that?

25 **A** Yes.

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1 Q And then he asked you (As read):

2 "Importantly, did elon declaratively say
3 funding is NOT secured as the *New York Times*
4 says?"

5 Writing in capital words the word -- capital letters the
6 word "not," to emphasize his question as to whether or not Elon
7 actually said funding was not secured. Do you see that?

8 A I see that, yeah.

9 Q Did you understand that Mr. Sperling was concerned about
10 funding after having reviewed this article?

11 A From, from my understanding, he was referring to a comment
12 by the writer of the *New York Times* article. I -- there was
13 nothing on the subject connected directly to Elon's statement.

14 Q Understood. But my question to you was: Did you
15 understand that Mr. Sperling had concerns regarding funding
16 after reviewing this article?

17 A I -- from what I remember with my reply, it's something
18 that I've just probably glanced over, that the vast majority,
19 basically all the emails and messages that I got about the *New*
20 *York Times* article were covering different things.

21 Q But am I correct that this particular email from
22 Mr. Sperling is asking about funding?

23 A I think he's asking about Elon admitting that there's no
24 funding, which is not what, from my understanding, the article
25 said. The article -- the quote about funding not secured was

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1 attributed to the journalist, not to Elon. And from my
2 understanding, James mistakenly attributed this comment in the
3 article to Elon.

4 **Q** Understood.

5 **MS. TRIPODI:** Mr. Viecha, I have no further questions
6 at this time.

7 Your Honor, if I can reserve for redirect, please?

8 **THE COURT:** All right. Thank you.

9 **MS. TRIPODI:** Thank you.

10 **THE COURT:** Cross?

11 **CROSS-EXAMINATION**

12 **BY MR. LIFRAK**

13 **Q** Good afternoon, Mr. Viecha.

14 **A** Good afternoon.

15 **Q** We have some binders with even more documents for you to
16 look at.

17 **A** Okay. Thank you.

18 **Q** And I know you have another earnings call today, so we're
19 trying to get you out of here by 2:00. So we'll do our best to
20 move along.

21 **A** Thank you.

22 **Q** You talked a bit in your examination about some emails
23 that you sent to certain analysts on August 7, 2018, after
24 Mr. Musk's tweets, and after the blog post. Do you recall that
25 testimony?

VIECHA - CROSS / LIFRAK

1 **A** Yes.

2 **Q** As of that point in August, 2018, how many months had you
3 been working at Tesla in California?

4 **A** In California, about five months, five, six months.

5 **Q** And prior to this time in August of 2018, had you ever
6 been involved in a go-private transaction of any kind?

7 **A** No.

8 **Q** Did you understand kind of the full process that it would
9 take for a company to go from a public company to a private
10 company?

11 **A** No.

12 **Q** Had you ever, at that point in August, 2018, been involved
13 directly in any kind of a corporate transaction from the
14 company side?

15 **A** No.

16 **Q** What were you doing before Tesla?

17 **A** I used to be a sell-side analyst in London, which was
18 writing research about companies in the automotive industry.

19 **Q** Okay. So let's back up eight days from that, so we're --
20 July 31st, 2018, the date of the meeting with the PIF that you
21 have referenced in your prior testimony. Do you recall
22 generally that day?

23 **A** Yes, I do.

24 **Q** Okay. So what were you working on that day?

25 **A** Deepak and I were finalizing the shareholder letter that

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1 would be published on August 1st.

2 Q And how frequently does that happen?

3 A Once in three months.

4 Q And is there also an earnings call associated with that
5 letter?

6 A Correct. So a couple of hours after the letter gets
7 published, we host an earnings call with a Q and A session.

8 Q Was there anything at that point that was particularly
9 important about that earning call?

10 A Yes. Elon sent me an email that he would like to
11 apologize to two analysts that he cut off in the prior earnings
12 call.

13 Q And was there any fall-out from that prior earning call
14 that you recall?

15 A Yes. In the prior earnings call, after the two analysts
16 were cut off, there was a significant backlash from both
17 investors and analysts saying that this is not a -- not a good
18 look. And Elon then asked if he could speak directly with some
19 of our top shareholders to apologize about cutting off analysts
20 on the earnings call.

21 Q And do you recall any kind of market reaction to that?

22 A Yeah. Our sell price went down quite a bit. It was seen
23 as a -- as a red flag.

24 Q And at the earning call that happened after July 31st,
25 2018, on August 1st, did Mr. Musk actually go through with that

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1 apology?

2 **A** Yes, he did go through with that apology. There were two
3 analysts, and they were at the top of the queue, and he
4 apologized before taking their questions and answering them.

5 **Q** You testified in your examination that you were told at
6 some point that the PIF had acquired 5 percent of Tesla. Do
7 you recall that?

8 **A** Yes.

9 **Q** And when exactly, to the best of your memory, did you
10 learn that?

11 **A** It was as we were sitting with Deepak, writing the
12 shareholder letter, there was a conversation. We were having
13 conversations on and off all the time, but there was a
14 conversation when he mentioned that: By the way, they have
15 been buying shares, and they have accumulated about 5 percent.

16 **Q** So you think it was that day?

17 **A** Yes.

18 **Q** At some point were you alerted to the fact that there was
19 a meeting going on between the PIF and other people at Tesla on
20 that day?

21 **A** Yes. Deepak mentioned to me that: By the way, the
22 representatives of Saudi PIF are in the building, at the
23 factory, meeting with Elon.

24 **Q** And then at some point were you alerted to the fact that
25 you were wanted at that meeting?

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1 **A** Yes. Sam Teller, our chief of staff at the time, sent me
2 a text saying that I might want to come downstairs with Deepak
3 to say hi to our new large shareholders.

4 **Q** And were you with Mr. Ahuja at the time?

5 **A** Yes. I was.

6 **Q** By the way, is it common for Mr. Musk to meet with
7 individual investors, such as what he was doing on July 31st?

8 **A** No. Very uncommon at the time.

9 **Q** How frequently at the time did that happen?

10 **A** Once a year or less.

11 **Q** Okay. So you get this text from Mr. Teller; you are with
12 Mr. Ahuja. What did you do next?

13 **A** We paused what we were doing with the shareholder letter,
14 and we went downstairs to the factory.

15 **Q** Okay. So then what happens when you get downstairs to the
16 meeting room where this meeting is taking place?

17 **A** We come downstairs to the meeting room at the factory.
18 Sam Teller comes out of the meeting room, and he asks Deepak to
19 come and join, and he asked me to stay outside.

20 **Q** So did you attend any part of that meeting between
21 Mr. Musk, Mr. Ahuja, and the PIF?

22 **A** No.

23 **Q** Could you hear anything that was going on in the room?

24 **A** No.

25 **Q** Did you -- could you see in the room, and did you observe

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1 whatever was going on in there?

2 **A** No.

3 **Q** So when the meeting ended, then what happened?

4 **A** When the meeting ended, everybody, including Elon and the
5 representatives of the Saudi PIF, left the room. And Deepak
6 asked me: Hey, why don't we take -- take them for a tour of the
7 Model 3 production line.

8 **Q** And so did you do that?

9 **A** Yes, we did that.

10 **Q** And were you with one or more representatives from the
11 PIF?

12 **A** Yes. So Deepak was with the senior representative of the
13 PIF in front, and I was at the back with the more junior
14 representative of the PIF.

15 **Q** This junior representative, did you have any conversation
16 with him about what had occurred in the meeting that had just
17 finished?

18 **A** No, we did not. We only talked about the manufacturing
19 process of the Model 3.

20 **Q** Could you hear what Mr. Ahuja was talking -- what he was
21 talking about with the more senior representative?

22 **A** No. The factory was very loud, so it was not possible to
23 hear anything.

24 **Q** Okay. So after the PIF does the tour, I assume they left?

25 **A** Yes. Correct.

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1 Q And then did you have a conversation with Mr. Ahuja?

2 A Yes. As soon as they left, Deepak looked at me and he
3 said: They offered again to buy the company, and Elon said
4 "Okay, let's do it."

5 Q And were those his exact words?

6 A I don't remember the exact words, but something along
7 those lines.

8 Q And when you heard that from Mr. Ahuja, did you believe
9 him?

10 A Yeah. 100 percent. I mean, Deepak is -- you know, his
11 character, he wouldn't, like, exaggerate or joke about this
12 sort of thing. He was a -- he is a very serious character.

13 Q And so when you heard this from Mr. Ahuja, did you respond
14 to him right away?

15 A No. I was completely in shock. And I -- it took me a
16 while to respond to him.

17 Q And when you eventually did respond, do you recall what
18 you said?

19 A Yes. What I told him is that: Well, Deepak, the issue
20 here is that a private company does not need the investor
21 relations. So, I just moved to the U.S. five months ago. It
22 means that I will not have -- not any work.

23 Q Can you explain why a private company doesn't need
24 investor relations personnel?

25 A Yeah, absolutely. So if there are no -- if there's no

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1 trading in the stock and there's no investors that are able to
2 go in and out, private companies in the vast majority of
3 scenarios do not have investor relations.

4 Q Okay. And when you pointed that out to Mr. Ahuja -- who
5 was your boss at the time, is that right?

6 A Yeah.

7 Q What was his response?

8 A He -- he basically, he put a hand on my shoulder and he
9 said: Martin, don't worry, we don't get rid of good people.

10 Q Other than what you have just described, do you have any
11 additional knowledge of what was said in that meeting on
12 July 31st in the Tesla factory?

13 A No.

14 Q Based on your observation, and going to the meeting room,
15 who would have that knowledge?

16 A Um, I guess Deepak, Elon and Sam Teller.

17 Q Other than the discussion that you've testified about with
18 Mr. Ahuja, did you ever discuss with anyone else who was in the
19 room what happened in that room?

20 A No.

21 Q After the conversation that you have described with
22 Mr. Ahuja, did you, on your own, obtain additional information
23 about the PIF?

24 A Yes. I -- I wanted to find out what's PIF's AUM, or
25 assets under management, to see whether it would be easy or

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1 difficult for them to make this type of transaction. And it
2 was very clear from my initial research that this is a very,
3 very achievable transaction.

4 **Q** You talked about in your prior examination your
5 interactions with Mr. Musk during the quarterly earnings call.
6 Do you recall that?

7 **A** Yes.

8 **Q** Putting that aside, in that time frame, in the 2018 time
9 frame, how common was it for you to have interactions with
10 Mr. Musk?

11 **A** At that time, very uncommon.

12 **Q** During this whole period, starting July 31st to today,
13 have you ever had any conversation with Mr. Musk about the PIF
14 or about the potential going-private transaction?

15 **A** No.

16 **Q** Did you ever discuss directly with Mr. Musk his August 7th
17 tweets or his blog posts on August 7th or August 13th?

18 **A** Not that I recall.

19 **Q** Were you involved in any of the discussions that Mr. Musk
20 had with the board of directors regarding the going-private
21 transaction?

22 **A** Only what I read in Elon Musk's blog posts.

23 **Q** Okay. So let's move now to -- we're on July 31st,
24 August 7th, you've testified you saw the tweets and Mr. Musk's
25 responses and the blog posts on that date?

VIECHA - CROSS / LIFRAK

1 **A** Uh-huh.

2 **Q** Yes?

3 **A** Yes. I have.

4 **Q** Were you surprised when you saw that Mr. Musk said that he
5 was considering taking Tesla private?

6 **A** No. I was only surprised that, um, what I understood went
7 on a week ago now became public information. So, yeah.

8 **Q** Were you surprised that Mr. Musk said "Funding secured"?

9 **A** No.

10 **Q** Was there anything in the tweets or in the replies that
11 followed or the blog post on August 7th that was new
12 information to you?

13 **A** Yes. The price of 420 was a new piece of information that
14 I wasn't aware of. And secondly, the ability for current
15 shareholders to roll over to a new private entity was new.

16 **Q** And you stated that the -- the statement "Funding secured"
17 did not surprise you. Why is that?

18 **A** Because from, from my perspective, there was a -- there
19 was an entity that is incredibly large that made a repeated
20 effort to buy this company. And from my understanding, if Elon
21 said: Yeah, let's do this, then you have an offer and an
22 acceptance.

23 **Q** So let's talk about some of the -- the specific
24 communications that you had with investors and analysts after
25 that, on August 7th. And the first I'd like you to look at is

VIECHA - CROSS / LIFRAK

1 Exhibit 145.

2 **MR. LIFRAK:** Which, I believe there are no further
3 objections?

4 (Document displayed to the Witness)

5 **THE COURT:** No objections?

6 **MS. TRIPODI:** No objection, Your Honor.

7 **THE COURT:** All right.

8 **MR. LIFRAK:** Request that be moved into evidence and
9 published to the jury Your Honor.

10 **THE COURT:** Admitted. You may publish.

11 (Trial Exhibit 145 received in evidence.)

12 (Document displayed)

13 **BY MR. LIFRAK**

14 **Q** And is this email that we are looking at, Exhibit 145, an
15 email and a response from Mr. Eirik Hogner at Lansdowne
16 Partners to you on August 7th?

17 **A** Yes.

18 **Q** Who is Mr. Hogner?

19 **A** Mr. Hogner is a hedge fund analyst in the UK.

20 **Q** And do you see, his initial email where it says (As read):

21 "Saw Elon's tweets and just wanted to confirm

22 that these tweets are real."

23 And then he says:

24 "Also see other people claim that Tesla says

25 more information is imminent."

VIECHA - CROSS / LIFRAK

1 Do you see that?

2 A Yes.

3 Q And could you read your response?

4 A Yes. My response is:

5 "Yes, these tweets are official."

6 Q Was Mr. Hogner the only person who asked whether the
7 tweets were real?

8 A No.

9 Q Let's look at Exhibit 58, which was shown to you on your
10 direct examination.

11 (Document displayed)

12 Q And this was a the series of emails that you had with
13 Mr. Koney on August 7th, is that correct?

14 A That is correct.

15 Q And in the middle of the page, as you testified
16 previously, you said that there was a firm offer. Right?

17 A Yes.

18 Q And just to be clear, whether or not you said that to
19 Mr. Koney, that there was a firm offer, what exactly was that
20 based on?

21 A It was based on my meeting with Deepak right after the
22 representatives of the Saudi PIF left the -- left the building.

23 Q And what did the term "firm offer," as you used it, mean
24 to you?

25 A I didn't think about it from a legal standpoint, as a

VIECHA - CROSS / LIFRAK

1 legal term. I thought about it in the way that there's a very
2 large, incredibly wealthy buyer that makes a repeated attempt.
3 And there's Elon that says: Yes, let's do this. That's the
4 way I thought about it.

5 **Q** And what was your goal, what were you trying to
6 communicate to these analysts when you told them that there was
7 a firm offer?

8 **A** I was trying to communicate that this was not made up. I
9 think we have to remember that back in 2017, 2018, the amount
10 of scrutiny that Tesla was under was truly exceptional. And,
11 you know, at the time it was very hard to believe -- sorry --
12 hard to see what people should or should not believe. So many
13 investors were just asking, like, is this even real?

14 **Q** And we saw in your prior examination, you using the same
15 language, "firm offer" for Mr. Michaeli, for example, in
16 Exhibit 150?

17 **A** Correct.

18 **Q** Mr. Erickson in -- I'm sorry, 146. Mr. Erickson in
19 Exhibit 150. Do you recall that testimony?

20 **A** Yes.

21 **Q** And was your -- the basis for you saying "firm offer" to
22 them the same as you have just described to the jury?

23 **A** Yes, it was the same basis.

24 **Q** When you sent these emails to the analysts and said things
25 like "firm offer," did you clear that language with Mr. Musk,

VIECHA - CROSS / LIFRAK

1 Mr. Ahuja, or, to your recollection, anyone?

2 A No.

3 Q And where did they -- where did those words come from?

4 A They were my -- it was my language, my words from my
5 understanding of the -- of the events that preceded.

6 Q Did you tell anyone at Tesla the fact that you had told
7 these analysts that there was a firm offer?

8 A No.

9 Q In Mr. Koney's email, Exhibit 58, you were asked about
10 certain parts of the email. I don't think you were asked about
11 the last line of his response right at the top. Do you, see
12 his response is:

13 "We will need a little more than that."

14 Do you see that?

15 A Yes.

16 Q And what did you understand that to mean?

17 A I think what that meant is that the tweet was, um, perhaps
18 too short, too vague, and it didn't -- analysts want to go into
19 specifics. It's their job to understand the specifics of
20 what's happening. And I think this was no different.

21 Q What kind of other information did analysts want as they
22 expressed it to you?

23 A Who's the buyer, how long is the transaction going to
24 take, can I be part of this transaction, um, are there any
25 legal hurdles that need to be jumped through before this

VIECHA - CROSS / LIFRAK

1 becomes a reality? That sort of thing.

2 Q And by the way, in your email to Mister -- was your email
3 to Mr. Koney during trading hours? Do you recall?

4 A No, it was outside of trading hours.

5 Q And we've seen, as you testified, a couple of other emails
6 where you've used the term "firm offer." Have you been sued
7 for telling analysts that there was a firm offer?

8 A No.

9 Q Has anyone, to your knowledge?

10 A No.

11 Q If we can look at Exhibit 151, which is in evidence.

12 (Document displayed)

13 Q This was the email and response from Mr. Sacconaghi. Do
14 you recall your testimony about that?

15 A Yes.

16 Q And in his initial email, his question is (As read):

17 "What does 'funding secured' (sic) Actually
18 mean?"

19 Do you see that?

20 A Yes.

21 Q Was he the only analyst who asked you what that phrase
22 meant?

23 A No. There were many that asked the same thing.

24 MR. LIFRAK: We can take that one down. Thank you.

25

1 BY MR. LIFRAK

2 Q About how many inquiries do you think you received about
3 Mr. Musk's series of tweets and the blog post on August 7th?

4 A Dozens.

5 Q And what kind -- was this in person at the conference you
6 were at?

7 A Both in person and by email.

8 Q And was the status of funding, in your view, the main
9 topic of their inquiries?

10 A Um, the main -- the generic theme was really: Is this
11 real? Is this a real event? Or is this made up?

12 Q You testified, in addition to these emails on August 7th,
13 you then after that received some feedback from existing
14 investors in terms of whether they would support Tesla going
15 private or not. Do you recall that?

16 A Yes.

17 Q And who asked you to do that?

18 A I think, I think it was Deepak.

19 Q And did you have an understanding as to why you were asked
20 to do that?

21 A I understood that since Elon tweeted that he hopes that
22 every shareholder becomes part of the private entity, that he
23 was trying to understand what the -- what the situation is.

24 Q And do you know if Mr. Musk was, himself, reaching out to
25 investors during this time? Do you have an understanding, one

VIECHA - CROSS / LIFRAK

1 way or the other?

2 **A** Um, I think there -- there were some conversations in the
3 background, but I cannot recall.

4 **Q** And did you learn, one way or the other, what that
5 feedback was that Mr. Musk received?

6 **A** No.

7 **Q** What about Goldman Sachs? Did you have an understanding
8 whether or not they were also receiving feedback from existing
9 investors?

10 **A** I wouldn't know.

11 **Q** Same answer for Silver Lake?

12 **A** Correct.

13 **Q** You talked a little bit about this but do you recall
14 whether some of the top shareholder were at least supportive of
15 the idea of going private, initially?

16 **A** Yeah, I think definitely some of the top shareholders
17 were.

18 **MR. LIFRAK:** If we could look at Exhibit 147, which
19 was put evidence.

20 (Document displayed)

21 **BY MR. LIFRAK**

22 **Q** This was an email you testified about in your prior
23 examination. I don't think you were shown the very top line
24 and I wanted to ask you about that.

25 Do you see where it says:

VIECHA - CROSS / LIFRAK

1 "I just to Ron Baron..."

2 I assume you meant "just talked to"?

3 **A** Yes.

4 **Q** (As read)

5 "I just to Ron Baron, who definitely wants to
6 be part of this new structure."

7 And then it says:

8 "I'll meet Fidelity tomorrow."

9 Do you see that?

10 **A** Yes.

11 **Q** Could you describe the conversation with Mr. Baron that
12 you reference here?

13 **A** Yes, I think Ron Baron at the time said that the -- the --
14 his investment fund does not have ability to own private shares
15 but he will -- he will make a change in order for that to be
16 possible.

17 **Q** Do you recall the initial feedback you got from T. Rowe?
18 You, personally.

19 **A** Um, the initial feedback I got from T. Rowe was that yes,
20 we can hold a private company.

21 **Q** And who was that from?

22 **A** I think it was Joe Fath.

23 **Q** Who is Joe Fath?

24 **A** Joe Fath is a portfolio manager at T. Rowe Price.

25 **Q** What was the -- on a separate -- somewhat separate topic,

VIECHA - CROSS / LIFRAK

1 but what was the status of Tesla's relationship with Mr. Fath
2 and T. Rowe as of July, 2021, when Mr. Fath's deposition was
3 taken in this case?

4 **A** Um, I believe by that time, um, T. Rowe has sold out a
5 vast majority of their Tesla stake. There was a -- I don't
6 remember the exact date now, but when we did a capital raise a
7 few years back, Elon would be involved in investor discussions
8 on the day of the capital raise, and I think when there was a
9 capital raise conversation with T. Rowe Price, that the call
10 did not go very well. The analyst from T. Rowe Price kept
11 asking fairly short-term questions at a time, and Elon said
12 something along the lines of: I don't think -- I don't think
13 you should be investors in this company.

14 **Q** So we've talked about Ron Baron, T. Rowe. Do you recall
15 the initial reaction of UBS that you received?

16 **A** Yes. The reaction from UBS was very positive because UBS
17 has a wealth management arm. And generally speaking, wealth
18 management companies or wealth management arms are much more
19 likely to own shares in private companies.

20 So UBS feedback was that: We would be happy to
21 substantially increase our stake at Tesla, as a private
22 company.

23 **Q** You testified in your previous examination that some of --
24 some smaller institutional investors may have an issue. Is
25 smaller institutional investors, is that the same thing has a

VIECHA - CROSS / LIFRAK

1 retail investor?

2 **A** No.

3 **Q** Could you explain what that difference is?

4 **A** Yes. Absolutely. Small institutional investor is an
5 investment fund that manages maybe a billion dollars of other
6 people's money. A retail investor, if I individually hold
7 Tesla shares that I bought for my cash, that makes me a retail
8 investor. I'm not connected to any institution that manages my
9 money.

10 **Q** Okay. And finally, Mr. Viecha, I wanted to ask some
11 questions about the *New York Times* article on August 17th that
12 you were asked about.

13 **A** Yeah.

14 **Q** You saw the article at the time, is that correct?

15 **A** Yes.

16 **Q** And did you get feedback from investors specifically about
17 that article?

18 **A** Yes, I have.

19 (Document displayed)

20 **Q** And that's Exhibit 171.

21 How many investors did you speak to regarding the *New York*
22 *Times* article?

23 **A** Maybe a dozen.

24 **Q** And, and why do you speak to them? Did you -- let me take
25 a step back. Did they reach out to you, typically? Or did you

VIECHA - CROSS / LIFRAK

1 reach out to them?

2 **A** They would typically reach out to me.

3 **Q** And what generally was the feedback that you received from
4 these investors regarding the *New York Times* article?

5 **A** The general feedback was people very concerned about
6 well-being of Elon, about burnout. Um, people were just
7 really, really worried whether he can still continue to do this
8 job.

9 **Q** Is there any feedback from any particular shareholder that
10 really stands out in your mind?

11 **A** Yes. Ron Baron called me after this article came out and
12 he was just -- he was very -- just concerned about Elon as a
13 person. And he told me: Hey, how can we get Elon to take some
14 holiday? You know, he's clearly -- has just way, way, way too
15 much on.

16 **Q** Other than the one inquiry that we saw in your
17 cross-examination from UBS that you were shown, Exhibit 160,
18 did anyone else raise that one line in the article about
19 funding?

20 **A** No. Not that I'm aware of.

21 **Q** Let's take a look at Exhibit 161, which is in evidence and
22 which you testified about.

23 (Document displayed)

24 **A** Yeah, I can see that.

25 **Q** So again, this was an email that you sent on the 19th of

VIECHA - CROSS / LIFRAK

1 August to Mr. Ahuja, who is the CFO and your boss, correct?

2 A Correct.

3 Q And Mr. Maron, who's the general counsel of the company?

4 A Correct.

5 Q And was this email -- let me ask, open, what was the
6 purpose of this email?

7 A The purpose of this email is to really provide everything
8 that I have been hearing from investors over the past few days
9 and really just lay out all the facts and all the feedback that
10 I have been getting.

11 Q And I noticed that the email was sent on a Sunday night at
12 10:16 p.m. Is that right?

13 A That is correct.

14 Q Was that a routine thing for you to be sending emails to
15 the general counsel and to the CFO on a Sunday night?

16 A No, it was not.

17 Q And why was it happening in this situation?

18 A Because I just thought it was extremely important to, to
19 lay out all the, you know, unedited, honest feedback about what
20 do people think.

21 Q Okay. Let's look at some of the paragraphs that you
22 didn't see on your prior examination. In particular, the first
23 paragraph.

24 A Yes, I can see it.

25 Q And it says:

VIECHA - CROSS / LIFRAK

1 "In the past few days, I either met in person
2 or spoke on the phone with: FIDO, T. Rowe,
3 Jennison, Capital World, Capital
4 International, PRIMECAP, Baron Capital, UBS
5 O'Connor, and many others."

6 Do you see that?

7 **A** Yes.

8 **Q** And was that specifically in reaction to the *New York*
9 *Times* article or something else?

10 **A** That was more of a generic, generic conversations that
11 I've had, whether in person, over the phone, et cetera.

12 **Q** And then if you look down to the first numbered paragraph
13 entitled "Key man risk." Do you see that?

14 **A** Yes.

15 **Q** And it says (As read):

16 "While 'key man risk' was always an important
17 point of Tesla investment debate, this debate
18 is currently getting significantly more
19 traction. This debate involves Elon's health
20 and decision-making ability, given
21 exhaustion. The secondary impact that some
22 investors mentioned was our ability to
23 recruit/retain talent, given intensity of our
24 work pace. High churn rate of VPs and
25 C-level managers is, in a way, a part of this

1 debate."

2 Do you see that?

3 **A** Yes, I do.

4 **Q** And what did you mean by "key man risk" in that paragraph?

5 **A** By "key man risk" I mean an entity that has outsize
6 dependence on a single person like Apple and Steve Jobs,
7 et cetera.

8 And investors were just really, really concerned whether,
9 you know, this sort of tempo of working and execution is
10 sustainable. And, you know, what sort of impact can it have on
11 Elon and his health.

12 **Q** And how, if at all, did that relate to the *New York Times*
13 article?

14 **A** The *New York Times* article had a very dark tone, and it
15 talked about, you know, taking sleeping medication to be able
16 to go to sleep. You know, going through a lot of pain. There
17 was a lot of -- um -- it was a dark article, for sure.

18 **Q** If you could look at the next page, Subsection (a) right
19 at the top.

20 (Document displayed)

21 **Q** Where it says (As read):

22 "Worst is yet to come: Elon's statement in
23 the NYT..."

24 Is that the *New York Times*?

25 **A** That is correct.

VIECHA - CROSS / LIFRAK

1 Q (As read)

2 "That 'But from a personal pain standpoint,
3 the worst is yet to come' spooked some people
4 as this statement was understood in many
5 different ways. Jennison told me that they
6 weren't sure if they could (sic) just 'run
7 for the hills (divest).' I did my best to
8 explain that this statement has nothing to do
9 with our current production, demand and
10 operations."

11 Do you see that?

12 A Yes, I do.

13 Q And can you explain what you were intending to convey with
14 that paragraph?

15 A What I was trying to convey is that for many investors, we
16 sort of, from a Model 3 production standpoint -- and really, at
17 the time it was all about the Model 3 production -- um, that
18 the worst is behind us. But Elon stated in the article that
19 the worst is yet to come, from a personal pain standpoint.

20 So investors were just not sure whether there's something
21 in the background that we are not aware of, that we should be
22 worried about. That's the way some people were thinking about
23 it.

24 Q Did others share concern with you about the statement?

25 A Yes.

VIECHA - REDIRECT / TRIPODI

1 **Q** Okay. You have a number of paragraphs in here. I have
2 gone through some, opposing counsel went through others. But
3 could you tell us in this email whether you said anything about
4 feedback that you had received or inquiries that you had
5 received regarding funding?

6 **A** No.

7 **Q** And why is that?

8 **A** Because it was not an important part of the debate at that
9 time.

10 **MR. LIFRAK:** No further questions at this time,
11 Your Honor.

12 **THE COURT:** All right. Thank you.
13 Anything on redirect?

14 **MR. APTON:** Mr. Viecha and Your Honor, I just have a
15 few brief questions.

16 **THE COURT:** Okay.

17 **REDIRECT EXAMINATION**

18 **BY MS. TRIPODI**

19 **Q** Mr. Viecha, hello again.

20 **A** Hi.

21 **Q** Your counsel was discussing with you that you came to
22 Tesla only five to six months prior to the tweets on August,
23 2018, is that correct?

24 **A** I moved to the U.S. with Tesla five to six months prior to
25 the tweets.

VIECHA - REDIRECT / TRIPODI

1 Q Had you been working with Tesla prior to moving to the
2 U.S.?

3 A I had, from London, U.K.

4 Q But fair to say that once you are on U.S. soil, all of a
5 sudden this is a big job, big company, and big news in August,
6 2018. Correct?

7 A Sorry, I didn't catch the last sentence.

8 Q Big news in 2018. Is that correct?

9 A Big news in which sense? I'm not sure if --

10 Q Relating to the going private.

11 A Yes.

12 Q Did anyone at Tesla offer to step in or take over
13 communications with investors or analysts for you?

14 A No.

15 Q Did anyone at Tesla indicate that you were not experienced
16 enough to respond to investors regarding the going-private
17 tweets?

18 A No.

19 Q If I can just cover a couple of points with respect to
20 your knowledge of the July 31st meeting.

21 A Uh-huh.

22 Q Am I correct that your understanding of what occurred at
23 that meeting is based on your discussion with Mr. Ahuja, the
24 CFO?

25 A That is correct.

VIECHA - REDIRECT / TRIPODI

1 Q And you did not have any discussion with the junior member
2 of the PIF with whom you were walking to do the factory tour
3 after the meeting?

4 A That is correct.

5 Q And I believe you testified that Mr. Musk, Mr. Teller, and
6 Mr. Ahuja would have knowledge of what went on in that meeting.
7 Is that correct?

8 A Um, I believe so. At least part of it.

9 Q Is it fair to say that the members of the Saudi PIF who
10 were also attendees at the meeting would have knowledge?

11 A Yes.

12 Q And you have testified regarding the PIF, your
13 understanding that the source of funding for the "Funding
14 secured" tweet was based on what occurred at the July 31st
15 meeting with the Saudi PIF. Is that correct?

16 A It was based on my conversation with Deepak after the
17 meeting with the Saudi PIF, on top of the fact that it was
18 clarified to me that this was a repeated attempt.

19 Q And when Mr. Ahuja conveyed to you what had occurred at
20 that meeting, am I correct that you testified that Mr. Ahuja
21 said that Saudi PIF was looking to buy the company?

22 A I don't recall the exact words he said but he was --
23 something along the lines of buying the whole company.

24 Q Now, I believe you also testified that in response to the
25 tweets, you heard from investors and analysts regarding whether

VIECHA - REDIRECT / TRIPODI

1 or not the tweets were real. Is that correct?

2 **A** Correct.

3 **Q** Did you have any understanding as to whether the stated
4 price of \$420 per share led analysts and investors to doubt the
5 truth of the tweet because 420 is a marijuana reference?

6 **A** I have -- I have seen that sort of theory in -- made by
7 some journalists out there. It's not something that I've heard
8 so much from the investment community that I can recall.

9 **Q** After the tweet was made by Mr. Musk, did Mr. Musk ever
10 reach out to you to find out whether or not you were responding
11 to analysts and investors about the tweet?

12 **A** No.

13 **Q** So, fair to say that Mr. Musk never expressed that he was
14 not okay with how you were responding regarding the tweet?

15 **A** No.

16 **Q** Did Tesla, the company itself, or anyone working for
17 Tesla, ever express to you that they were not okay with how you
18 were responding to the tweet?

19 **A** No.

20 **Q** And finally, Mr. Viecha, the emails that I've showed you
21 and that your counsel has showed you today have not contained
22 any reference to your knowledge of prior internal meetings with
23 the PIF. Is that fair to say?

24 **A** Correct.

25 **Q** So your emails that we have seen today, shown by me and

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1 your counsel, have only referred to the wording in the tweet,
2 itself. Not necessarily -- you are claiming that it was based
3 on what you believed, but you're responding to inquiries
4 regarding the wording of the tweet. Is that correct?

5 **A** Well, if I respond to any inquiries, I will have a prior
6 knowledge that is, you know, far, far deeper than, um, you
7 know, what's out there. So, you know, I responded, based on
8 the best of my knowledge of the events.

9 **Q** Understood. But with respect to prior meetings to the
10 Saudi PIF, these are meetings prior to July 31st, are you
11 claiming that you were aware of such meetings?

12 **A** I was aware of such -- I was made aware of such meetings
13 on July 31st.

14 **Q** And am I correct to say that your emails that we've looked
15 at today, they do not mention any prior meetings or
16 interactions with the Saudi PIF?

17 **A** That is correct.

18 **MS. TRIPODI:** Thank you, Mr. Viecha. I have no
19 further questions.

20 Thank you, Your Honor.

21 **MR. LIFRAK:** Nothing further.

22 **THE COURT:** All right. Well, good timing. That
23 concludes today's testimony. We will resume again with some
24 additional witnesses tomorrow morning at 8:30.

25 Please, again, do not discuss this case with anyone, do

PROCEEDINGS

1 not attempt to do any research on your own. Do not read or
2 listen to any coverage of this case. And do not form any
3 opinions until this case is submitted to you for deliberation.

4 Before I let you go, I do want to ask, maybe tomorrow when
5 we get an indication from you, that we have a number of
6 witnesses that were lined up, and if there's any way that you
7 all could stay a little extra time on Friday.

8 I mean, if not, that's fine, but if you can stay an extra
9 hour if we go a little longer so we can get some witnesses who
10 may have traveled in, that would be appreciated.

11 So if you could check your calendars and maybe report back
12 tomorrow whether, you know, if you could stay to either 3:00 or
13 3:30 on Friday if we go that long, just let us know. Otherwise
14 we will see you tomorrow morning.

15 Thank you.

16 **THE COURTROOM DEPUTY:** All rise for the jury.

17 (Jury excused)

18 (The following proceedings were held outside of the
19 presence of the Jury)

20 **THE COURT:** All right, Mr. Viecha, you are excused.

21 Thank you.

22 (Witness excused)

23 **THE COURT:** So we'll see if we can get a couple --
24 maybe an extra session in on Friday to accommodate the concerns
25 about the witnesses who have -- who may be scheduled.

PROCEEDINGS

1 How are we looking in terms of tomorrow? Looks like still
2 have Brinkman.

3 **MR. SPIRO:** Yes, Your Honor; if, if I could just add
4 something that I had said earlier.

5 **THE COURT:** Yeah.

6 **MR. SPIRO:** Because, again, and I was very much
7 looking for the Court's guidance on this, and I'm not trying to
8 overly disrupt, you know, plaintiff's hoped-to schedule, but
9 this is how trials happen sometimes. And they obviously spent
10 far longer with Mr. Musk than they expected.

11 They told us -- they served these directors, just so the
12 Court knows, through Counsel. And sort of asked, even though
13 the directors are not in the state, not in the country, for
14 them to come. They estimated far, far earlier dates. I
15 understand that happens with trials.

16 They have now flown in, of their own volition. Again,
17 they're not under the subpoena power. They're just here.
18 Those subpoenas have no validity. We've done our best to
19 accommodate this. So this was all done, again, through
20 counsel, doing our best to accommodate plaintiffs.

21 And so we're speaking specifically now of Anthony Gracias,
22 because he's flown in, he's been here for days. He flies out
23 on Thursday.

24 So, again -- and I just want to also point out, which
25 everybody here knows, but I just want to say it, I mean, they

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1 can't both call him and play his depo. And they also can't
2 play a depo of someone that's located in the district,
3 normally. So -- and we obviously know all this. But this is a
4 special circumstance, when we were asked to bring him here on
5 certain days.

6 Their day estimates, just so the Court knows, were the
7 20th to the 24th. And so this is -- this is the problem that's
8 very easily solved by doing the live witnesses, and making sure
9 that the ones that have to leave can be -- can be --

10 **THE COURT:** Well, is Mr. Gracias the main one --

11 **MR. SPIRO:** I think he's the only issue now.

12 **MR. PORRITT:** Well, and, Your Honor, this is the first
13 time I've heard, anyway. I don't know if they've had
14 communications with my colleagues about this issue with
15 Mr. Gracias.

16 So, you know, we accommodated Mr. Viecha because he has a
17 commitment tomorrow. So I think we're working, we're
18 attempting to work in good faith with defense counsel.

19 So I think that will -- I think it's fair to say that we
20 and defense counsel need to get together this afternoon and
21 talk about the scheduling of witnesses. And we will do that.

22 **THE COURT:** All right.

23 **MR. SPIRO:** And we are working together, and I very
24 much appreciate it. And to be honest, I was dealing with
25 Mr. Musk, I wasn't as focused last week with the scheduling

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1 issues.

2 So I'm just bringing it to everybody's attention, because
3 I don't want to be in a position where I didn't flag this.
4 Because it's a real issue.

5 **THE COURT:** All right. Sounds like the critical one
6 witness in terms of scheduling at this point is Mr. Gracias.
7 And you're essentially asking whether he can be heard tomorrow,
8 because he is leaving on Thursday.

9 **MR. SPIRO:** That -- correct.

10 **THE COURT:** And so that would be the issue, whether --
11 it doesn't mean, I don't -- I assume he's not going to take all
12 day.

13 **MR. PORRITT:** I'm hesitant to make a prediction after
14 my past performance, but I don't think so. Not from our side.

15 **THE COURT:** All right. Yeah. So why don't you talk
16 and see. Whatever your order is, it's less of a deal to take
17 perhaps one out of order than a whole slew.

18 And your concern about a whole day of, you know, video
19 depositions, I agree with that. But, seems like that could be worked
20 out.

21 **MR. PORRITT:** I agree, Your Honor. This is the first
22 I've heard of it. I think we can -- we should be able to work
23 it out. We are not averse to taking witnesses out of order,
24 potentially, if it's necessary.

25 **THE COURT:** All right. Why don't you see if you can

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1 meet and confer on that. Meanwhile, I guess I should look at
2 the depo exhibits. Are there exhibits to Mr. Gracias that are
3 at issue, are going to be contested that I need to --

4 **MR. PORRITT:** I'm not sure -- I don't think there's
5 very many.

6 **MR. SPIRO:** Yeah, certainly not anything major that's
7 left. I think the ball should be rolling down the hill at this
8 point, Your Honor, now that we've gotten your --

9 **THE COURT:** Well, there's kind of a repeat pattern
10 that goes over and over again, so we all know what's coming.
11 At least, my view of the evidence. So, why don't you see what
12 you can work out.

13 Meanwhile, we've issued rulings on one set, and we
14 continue to roll through these and get as many rulings as we
15 can.

16 We did get you that -- I think we filed the rulings on the
17 depo expert -- excerpts so you could have that, so your
18 audio/visual people will know what that --

19 **MS. TRIPODI:** Every time we look at the deposition
20 excerpts, they get shorter and shorter, you'll be pleased to
21 hear.

22 **THE COURT:** Good.

23 **MR. SPIRO:** Another reason, another reason.

24 **THE COURT:** All right.

25 **MR. SPIRO:** Thank you, Your Honor.

1 **THE COURT:** We'll see you tomorrow.

2 **THE COURTROOM DEPUTY:** Court is adjourned.

3 (Proceedings concluded)

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CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Tuesday, January 24, 2023